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AUTHORIZATIONS FOR CPSC

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSUMER

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

REAUTHORIZATION OF THE CONSUMER PRODUCT SAFETY COMMISSION

MARCH 13, 1989

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CONSUMER PRODUCT SAFETY COMMISSION

MONDAY, MARCH 13, 1989

U.S. Senate,
Subcommittee for the Consumer,
Committee on Commerce, Science, and Transportation,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m., in room SR-253, Russell Senate Office Building, Hon. Richard H. Bryan (chairman of the subcommittee) presiding.

Staff members assigned to this hearing: Kevin Curtin and Linda Lance, staff counsels; and Chuck Harwood, minority staff counsel.

OPENING STATEMENT BY SENATOR BRYAN

Senator Bryan. The subcommittee will come to order.

I would like to extend a good afternoon and welcome to all of you today, who are here to participate or to observe this hearing on the Consumer Product Safety Commission.

This is the first hearing that I have the privilege to chair since becoming the Chairman of the Consumer Subcommittee, and I view the agenda of this committee with a great deal of anticipation.

At the outset, I wish to state my pleasure at having the opportunity to work on consumer matters with a good friend of mine for many years, the distinguished Ranking Member, Senator Gorton, who is going to be joining us shortly.

Senator Gorton and I had occasion to work together when we served, respectively, as the Attorneys General of our States.

I am sure that we will enjoy a close working relationship as members of this subcommittee.

It is significant that we begin our work on this subcommittee with consideration of the reauthorization of the Consumer Product Safety Commission. Congress made the decision in 1972 to establish the CPSC and gave it a charter to protect American consumers.

Unfortunately, the CPSC has suffered from reduced funding, internal conflict and a lack of direction. This agency has the potential to be one of the most important entities to protect consumers at the Federal level, and we, in the Congress, must make sure that the CPSC has clear direction and sufficient resources to achieve its responsibilities.

For example, in the important area of toy safety, the CPSC has a vital role in protecting the most vulnerable portion of America's population, our children. There are about 150,000 different toys available in the United States, and much enjoyment comes from them. But, whether it is a bicycle in Reno, a lawn dart in California, or a doll with buttons that can come off and be swallowed in

New York, toys can also cause injuries. And most of the harm from these toys is caused to children under the age of 15.

In addition, in 1987, there were 185,000 injuries from playground equipment, including fractures, internal injuries and concussions; 40 percent of those injuries involved children younger than six years of age.

There are, of course, other kinds of hazards that we encounter daily. In 1985, the Nation lost 164 elderly persons to fires caused by sleepwear that ignited. The very furnishings in our homes and offices are cited as sources of indoor air pollution, posing harmful health effects.

So, all of us, big and small, are the CPSC's constituency, and we all need the CPSC to be an effective agency. It is not just American consumers who are harmed when the CPSC does not meet its responsibilities. American business also suffers when business does not know what to expect from the very Federal unit that is charged with monitoring its product-related activities.

Business and the CPSC have worked together to advance safety on many occasions. Just recently, for example, about 30,000 crib gyms were voluntarily recalled by the manufacturer because the CPSC identified a potential strangulation hazard to infants. Fortunately, no such incidents involving this product were reported prior to this corrective action.

While we support and applaud the CPSC's efforts to prevent this and other product-related dangers, we need to revitalize the agency once again.

The last authorization bill for the CPSC was enacted in 1981. Congress has been unable to move a CPSC bill through the entire legislative process since that time.

But I am hopeful that this year will be different.

Companion legislation is proceeding in the House of Representatives, and we intend to make every effort to produce a bill that can be signed into law this year.

Let me note that the draft bill which we consider today does not contain any product-specific initiatives. The decision not to include these particular matters does not mean that I do not consider them to be important. Indeed, I intend to focus on some of these issues later in the year.

For now, I believe that it is appropriate to redirect the overall activities of the CPSC.

I am pleased that we have with us today representatives from the CPSC, consumer groups, the business community, and other individuals who labor on behalf of consumers.

Before we begin with their testimony, I would like first to include in the record a statement from Senator Hollings, the Committee Chairman.

[The statement follows:]

OPENING STATEMENT BY THE CHAIRMAN

Mr. Chairman, the hearing which is being conducted today by the Consumer Subcommittee concerns an agency that plays a vital part in protecting our citizens from harm resulting from unsafe and dangerous products—the Consumer Product Safety Commission (CPSC).

Since 1972, when the CPSC was established, America has relied on the Federal Government to protect consumers through the regulatory, information and research functions carried on by the CPSC. But over the past eight years, the Reagan Administration has tried to abolish or weaken the agency, and the CPSC's ability to fulfill its statutory responsibilities has been severely eroded. There have been a lot of accusations, but the plain fact is that America's consumers have been left unprotected. We need to change that situation.

I am glad that this Subcommittee will look at ways to improve the regulatory processes at the CPSC, to rectify the problem with the quorum requirements of the current law, and to consider ways to make the voluntary standards process more effective.

I look forward to working with Chairman Bryan and my other colleagues to get the CPSC back on track.

Senator **Bryan**. Now I would like to proceed with the witnesses. I would ask each of you, if you will, to try to confine your testimony to five minutes. We have been provided with a copy of your testimony and we greatly appreciate your appearance here today before the subcommittee.

On our first panel is Mrs. Esther Peterson, who is a Representative to the United Nations for The International Organization of Consumers Unions, and a long advocate of consumer causes.

Nice to have you with us today, Mrs. Peterson.

Secondly, we have Dr. Martin Eichelberger, M.D., Director of Trauma Services, Children's Hospital/National Medical Center, representing the Safe Kids Campaign.

Dr. Eichelberger, it is nice to have you with us today.

Mrs. Peterson, if I may, I would ask you to begin first, please.

STATEMENT OF ESTHER PETERSON, REPRESENTATIVE TO THE UNITED NATIONS FOR THE INTERNATIONAL ORGANIZATION OF CONSUMERS UNIONS, WASHINGTON, DC

Mrs. **Peterson**. Thank you, and congratulations on picking CPSC reauthorization, Senator, as your first effort. I think you could not have picked a subject or an area of greater significance.

We, too, are hopeful that the aims that you outlined will certainly become real.

It is a pleasure for me to be here, to assist, if I can, in the reauthorization.

It brings back many memories of even before we had the Commission and the corridors that I have walked with Betty Furness and many others to help get the agency on track and to keep it going the way Congress intended.

Certainly, your deliberations here in helping the reauthorization are going to be tremendously important.

I have taken great pride as I have worked on this, and I have seen the consumer movement make great, great progress. But sometimes, I feel that we are going a little bit backward, and I have felt that definitely in relation to the Product Safety Commission, because it has suffered from budget cuts and it has suffered from the difficulties of lack of money, resources and staff.

Certainly it has suffered greatly during the tenure of the last chairman, who I feel—this is my feeling—was not dedicated to the mission of the agency and not willing to carry out the mandate that the Congress gave the CPSC.

I very definitely recall the efforts during the early days, and I'll never forget the arguments that we had—should it be an independent agency; should it be tucked away in HEW some place? It was in HEW in those days; now it's HHS.

I remember feeling very strongly that it should be independent, that it should not be entangled with the kind of political bureaucracies that are quite possible. It would end up, I feared, maybe just like a stepchild. It had to have the independence and the strength to act very definitely on its own, without all of the political difficulties that might attend.

So I strongly worked for independence of the agency.

As I look back at the commission and as I look back at the lobbying in those days, I was very, very impressed by the overwhelming bipartisan support for the agency. Certainly injury hurts equally whether you are a Democrat or a Republican. In lobbying for this, it became very clear that product related deaths and injuries did not discriminate by political affiliation.

Certainly it was true in the passage of the bill. In the Senate the vote was 69 to 10 in favor of the legislation; in the House, it was 318 to 50. There was no talk about whether it should be or should not be. The point was how do you do it, how do you structure it so that it will be effectiive.

In working on it in those days, there was simply a feeling that something must be done, it was done and it really is an example of our form of democracy.

We made a lot of progress.

In my experiences, I have been around the country a great deal, and CPSC was always a symbol of our democratic system—that we really care for people. I think that is important.

When you look at the progress we have made, I cannot but remember and think about the kinds of injuries we used to hear about. Now we do not hear about exploding pop bottles, which were very common at that time; or TV sets catching on fire. We don't hear about those now. Or children getting their heads caught in poorly constructed cribs; children choking on toys—which still does happen a bit, I am afraid to say. Eyes, as you pointed out, from stuffed animals get stuck in throats. I have seen so often rattles breaking, and in developing countries, I have seen pacifiers choke little children, stuck in their mouths. Also people's bones get broken from ladders that are poorly constructed.

But the nice thing is that we do not hear a lot about those kinds of injuries today. We have made progress, and I think the big job now is to get CPSC back on track.

I am confident that improvement in product safety certainly would have continued if the agency had been nurtured, rather than strangled, as it was by the Reagan Administration. The severe cuts experienced by the agency during the 1980s have left it definitely beleaguered.

This is particularly disheartening when one remembers the spirit of the bipartisan cooperation that made creation of the CPSC possible.

As a Representative at the United Nations for the International Organization of Consumers Unions, I travel extensively and, therefore, have considerable exposure to the perceptions of the international community regarding American consumer protection efforts. In my work at the U.N., I was always very, very proud of CPSC. I would point with pride to the CPSC as an example of effective product regulation.

Unfortunately, over the last years, I have not been able to point with pride to CPSC because the agency is but a ghost of its former self. It can no longer be offered as a model for consumer protection.

The CPSC has fallen victim to the same mindset that caused the United States to oppose United Nations' acceptance of the guidelines for consumer protection, or the publishing of the consolidated list of banned and dangerous products. All of that, of course, was during the Reagan Administration.

So, my appeal today is that you, in your position here on this committee, help return the CPSC to a position of usefulness, where it can really fulfill the mandate given to it by Congress in 1973. That mandate reads: "To protect the public against unreasonable risks, injuries, and deaths associated with consumer products." It is a very straight-forward mandate, and certainly a part of your responsibility is to help return it to that unique position of usefulness and effectiveness.

I have to say that one of the big concerns you have is to do everything within your power to see that it is administered by someone who believes in it.

I am afraid that, under the direction of Mr. Scanlon, that was not true.

So I am hoping that you will do what you can to influence the type of commission that is appointed and confirmed.

Along with that, I think you have to keep the feet of the people who are guiding CPSC to the fire. Use your oversight ability, as you have it, to the greatest extent possible, because what you are doing is saving lives, you are saving kids' lives. I think that is one of the best things that you can do.

Insist that the job be done right. Certainly, Congress must act to reauthorize this vitally important agency. It has been operating, as you point out, without authorization since 1981, so it is time to get the agency back on track.

There are lots of specific recommendations as to how this should be done, and I'm not going to go into those. I have gone over the statements that are being made by some of my associates here, and I want to say that I recommend those very definitely.

The other important thing is the budget. You have to be sure that there is adequate funding, and don't let it be slashed by OMB. CPSC has to have the tools to work with. They cannot do their lifesaving work without the right tools. An adequate budget and an adequate staff are important.

CPSC is truly a consumer bargain. When you consider the amount of money that is saved by preventing the injuries, it is truly a cost effective operation. And that is when it is measured only in monetary terms.

The benefits that flow from a properly functioning CPSC certainly far exceed the amount of money spent.

So, I implore you to do all that you can and urge your colleagues on the Appropriations Committee to adequately fund CPSC and make it once again the shining example of government at its best.

Thank you.

[The statement follows:]

STATEMENT OF ESTHER PETERSEN, REPRESENTATIVE TO THE UNITED NATIONS FOR THE INTERNATIONAL ORGANIZATIONS OF CONSUMERS UNIONS

It is a great pleasure to have this opportunity to express my views concerning reauthorization of the Consumer Product Safety Commission. I hoped that this chance to share with you my recollections of the beginnings of the agency and the impact it has had on the consumer movement, domestically and internationally, will aid the committee in fashioning legislation that will restore the luster to a tarnished agency.

As advisor to three presidents, predominately on consumer matters, I have watched the consumer movement grow from a relatively insignificant force to a formidable political movement. I am very happy to be able to say that great strides have been made in improving consumer welfare since I first became involved in consumer issues. However, much remains to be done and, unfortunately, I fear that in some ways we may be moving backwards rather than forwards. I refer with sadness to the present state of the Consumer Product Safety Commission. I understand that the agency fell victim to severe budget and personnel cuts by the Reagan Administration and that staff morale at the agency suffered greatly during the tenure of the last chairman who, regretably, was not dedicated to the mission of the agency.

This state of affairs distresses me since I vividly recall the great hope we in the consumer community shared when the issue of protecting consumers from unsafe products began to get national attention in the late 1960's. In 1967, while I was Special Assistant for Consumer Affairs to President Lyndon Johnson, the National Commission on Product Safety was formed to study the extent of deaths and injuries caused by consumer products and to make recommendations for remedies. The shocking findings of the Commission revealed that consumer products injured 20 million Americans every year, and killed 30,000 more at an annual cost of $5.5 billion.

When these findings were presented to the public and to the Congress the reaction was uniform—this level of exposure to unreasonable product hazards was unacceptable. Something had to be done. At the time there was no argument that an agency with the mission of protecting and informing consumers was necessary. The only issue was the form such an entity should take. I was very vocal in urging that the agency be independent, and not part of a larger department such as HEW, as was being urged by others. I felt, and still feel strongly about the independence of CPSC since it must not be beholden to political expediency. Its mission is just too important.

Congress moved quickly and when compromise was reached on the structure and mandate of the agency, there was overwhelming, bipartisan support.

The Consumer Product Safety Act passed both houses of Congress with lopsided votes of 318-50 in the House and 69-10 in the Senate. The Consumer Product Safety Commission was born—the first federal agency with sweeping jurisdiction over the safety of tens of thousands of consumer products.

We in the consumer movement were excited and encouraged that partisanship had been put aside in recognition of the fact that product related death and injury does not discriminate by political affiliation. Expectations for the new agency were high and there was a real belief that the result of the work of the agency would be improved quality of life for all Americans. In my opinion creation of the Consumer Product Safety Commission represented the essence of our democracy—the belief that we can always do better.

It was a manifestation of the philosophy that an important role of government should be to promote the general welfare by making people's everyday lives safer and therefore better.

When the agency was functioning as intented and was adequately funded, it began to fulfill its mandate to protect consumers from unreasonable risk of injury. Between 1975 and 1983, the time during which the agency promulgated the great bulk of its standards, product related death and injury declined dramatically. I am confident that this improvement would have continued had the agency been nurtured rather than strangled as it was by the Reagan Administration. The severe cuts experienced by the agency during the 1989's have left it beleaguered and were the result of the triumph of deregulatory ideology over consumer safety. This is particularly disheartening when one remembers the spirit of bipartisan cooperation that made creation of the CPSC possible.

As representative to the United Nations for the International Organizations of Consumers Unions, I travel extensively and therefore have considerable exposure to the perceptions of the international community regarding American consumer protection efforts.

In my travels for IOCU I was always proud to offer the Consumer Product Safety Commission as the example for effective product safety regulation.

Unfortunately, of late, I am no longer able to point with pride to the CPSC. Because the agency is but a ghost of its former self, it can no longer be offered as a model for consumer protection. The CPSC has fallen victim to the same mindset that caused the United States to oppose United Nations acceptance of the Guidelines for Consumer Protection and the List of Banned Products during the Reagan Administration.

For the past eight years, consumer protection has been actively discouraged by the U.S. government not only domestically, but internationally as well. It is time that this shameful neglect of consumer safety stop.

This committee and this Congress are in a unique position to rescue the CPSC. With the departure of Terry Scanlon, a chairman who spent more time undermining the agency than pursuing its mandate, there is the opportunity to make vocal your concern that someone dedicated to public safety be appointed to replace Mr. Scanlon. Furthermore, you should not accept anyone less than that. The appointment and confirmation of a dedicated new commissioner is the most important step in putting the CPSC back on track.

Congress must also act to reauthorize this vitally important agency which has operated without reauthorization and Congressional guidance since 1981. I will not go into detail as to the specific remedies that are necessary, but I endorse the recommendations of the consumer spokespersons that are here today.

A most crucial component of revitalizing the CPSC is to ensure that the agency has adequate funding. At the very least everything possible should be done so that the budget request of the agency is not slashed by OMB. Even in today's atmosphere of dire budget crisis, the cuts should not be made at the expense of public safety. It should be kept in mind that this agency's current budget is almost half of the original appropriations made in the mid-1970's. CPSC is a truly a consumer bargain. Adequate funding of the CPSC will result in savings in deaths and injury that, even when measured only in monetary terms, will many times exceed the amount of money spent. I implore you to do all possible to urge your colleagues on the Appropriations Committee to adequately fund CPSC.

CONCLUSION

The Consumer Product Safety Commission began with bright hopes and was conceived in a spirit of bipartisan cooperation. Unfortunately the promise has gone unfilfilled because of lack of resources and, too often, subversion from within. Now there is a unique opportunity to restore the lost luster to this crucial agency. I urge you to do all you can to revitalize the CPSC to make it once again a shining example of government at its best.

Thank you.

Senator **BRYAN**. Mrs. Peterson, thank you very much. It is a pleasure to have you here as our lead-off witness.

I might just share with you that Senator Gorton and I have both expressed to the Administration an interest and concern about the level of funding for the agency. I am pleased to have the distinguished Ranking Member join us at this time.

As I indicated, Senator Gorton, in my opening comment, you and I have worked on a number of issues from the time we were Attorneys General together. Senator Gorton has had a long interest and involvement, both as Attorney General and as a former member of this body, in consumer interests.

So I am delighted to welcome him to this subcommittee, and now I would like to yield to him for an opening statement.

OPENING STATEMENT BY SENATOR GORTON

Senator **GORTON**. I would like to thank the Chairman, and I would like to thank Mrs. Peterson for her thoughtful testimony here.

I simply also will reflect on the fact that the Chairman and I, while we are new in this position, have had a long history of working together on other consumer related issues.

The Consumer Product Safety Commission should play a more prominent role in our entire consumer-economic structure than it has been able to play during the course of the last few years.

I hope that one of the evidences of that higher profile will be the passage in this year of an authorization bill (for the first time in three or four Congresses.

I believe and trust that this hearing today will be an opportunity for us not simply to review an authorization bill from the point of view of having a bill, but to consider both the history of the commission, the way in which its work has been conducted, the authority it has, and the structure under which it operates, so that we can create a commission for the future, which will be able to meet the very real needs which it was designed to meet when it was originally created.

Senator **Bryan**. Senator Gorton, thank you for that fine statement.

Now we will call upon Dr. Eichelberger.

STATEMENT OF MARTIN EICHELBERGER, M.D., DIRECTOR OF TRAUMA SERVICES, CHILDREN'S HOSPITAL NATIONAL MEDICAL CENTER, REPRESENTING THE NATIONAL SAFE KIDS CAMPAIGN, WASHINGTON, DC

Dr. **Eichelberger**. Good afternoon, Mr. Chairman, Senator Gorton.

As a surgeon who deals primarily with children, I really would like to thank you for the opportunity to testify to the important role the U.S. Consumer Product Safety Commission has in helping to protect our Nation's children from the leading cause of childhood death: unintentional injury, or, what some people would call accidents.

Many of these injuries are caused by unsafe products.

In the past, the Consumer Product Safety Commission was in the vanguard of efforts to protect children from the dangerous products linked to serious injury and death.

The lives of hundreds, perhaps thousands, of children have been saved by the CPSC initiatives in child resistant packaging of medicines and household poisons, safer designs for cribs and baby walkers, and by regulations banning toys with small parts and sharp edges.

More recently, the CPSC has been crippled by the lack of a quorum, due to unfilled vacancies on the commission. By reauthorizing the commission and by urging the Bush Administration to fill these vacancies, the U.S. Senate can help the CPSC regain its position as one of the Federal Government's premier advocates of child safety.

Last year, more than 8,000 children under the age of 15 died from unintentional injuries. In fact, injuries kill six times as many children as does cancer, the second leading cause of childhood death. But, unlike cancer, whose cure awaits scientific discovery, we have now the means to reduce greatly the death toll from unintentional injury.

It has been estimated that nearly 80 percent of all traumatic childhood deaths can be prevented.

Perhaps the greatest tragedy of childhood trauma is its predictability. Injuries are not accidents.

As Dr. C. Everett Koop, the Surgeon General of the United States, has said, nearly all injuries to children can be predicted and can be prevented.

Some of the most predictable and easily preventable injuries to young children result from the aspiration or ingestion of small parts from toys.

Let me share with you some of my experiences as a trauma surgeon at the Children's Hospital National Medical Center.

In the past few years, I have seen several children who have choked on small parts from toys. Legos, crayons, GI Joe's hatchet, and Barbie's shoe are but a few of the objects that we have surgically removed from children's small airways.

One child I remember is Bridget, a three year old girl whose parents became concerned when she started coughing and wheezing. Unaware of the true source of Bridget's problem, her parents first suspected a respiratory infection or an allergy.

After several allergy tests, she was referred to Children's Hospital, where an X-ray revealed a foreign body in her esophagus.

We removed a small, corroded, metal object from her throat. It turned out to be the missing buckle from her strawberry shortcake belt.

Bridget is now fine and is eagerly awaiting the start of kindergarten next fall. But she gave her family quite a scare. She spent four days in the hospital at a cost of over $3,000 to her uninsured family.

Children and their families must not be made victims of unsafe products and their design. The ability of the CPSC to help limit childhood injury goes beyond toys and toddlers.

For example, a national safety standard is currently needed for bicycle helmets. Every year, 400 children die from bicycle injuries, and 75 percent of these deaths involve head injuries.

Helmets are indisputably necessary for safe cycling. Currently, there is no single, national standard that insures a bicycle helmet will withstand the impact of a crash and save a child's life.

To paraphrase a famous brokerage house, "When the CPSC talks, America listens." By establishing a mandatory national standard for bicycle helmets, the CPSC can help make parents aware of the life-saving potential of bicycle helmets.

Interestingly, in a survey of 3,000 parents of third graders, the main reason parents cited for not providing helmets for their children was that they simply did not realize the importance of helmets.

By establishing a mandatory national helmet standard, the CPSC can help send the message to America's parents that helmets are important and they can save lives.

As a surgeon, I can bear witness to the tragic results of children riding bicycles without wearing helmets. Three days before Christmas, Joshua, a sandy-haired, eight year old boy, was admitted to the Trauma Service. He had received a ten speed bike for his birthday earlier that day.

No one knows whether he thought to check for the cars before darting out onto the street. You know, eight year olds sometimes forget.

What we do know is that after he was struck by an oncoming car, his head, unprotected by a helmet, struck the pavement. His depressed skull fracture and massive brain injuries were not immediately apparent. To the untrained observer, he looked merely like a sleeping boy with a small cut under his right eye. But Joshua never woke up. He was pronounced brain dead soon after admission to Children's Hospital.

Some would say that Tony and his family were luckier. Others would disagree. When a speeding car struck Tony on his bike, he, too, was not wearing a helmet. He survived the injury, but he and his family are scarred for life. Following a two month stay at Children's Hospital, where the cost of providing care for Tony was in excess of $75,000, he was sent to a rehabilitation hospital for six months of intensive therapy. Then he returned home.

His mother has quit her job in order to give Tony the daily care he needs, such as suctioning the phlegm that accumulates in his lungs and changing his diapers.

He can swing one arm on his own; but his mother must regularly move his joints to prevent his limbs from becoming permanently frozen in place.

Tony is now a wheel-chair-dependent, tube-fed nine year old. His parents say that they can tell his happy sounds from his unhappy sounds. But he cannot speak. Barring a miracle, he will never speak.

He will receive Social Security Disability income from the Federal Government for the rest of his life.

Those most familiar with his case believe that a helmet would have helped. Helmets don't just save lives; they can lessen the severity of injury and, thereby, reduce the extent of the disability.

Injuries, such as Tony's result not only in disabled children, but as the children get older, in disabled adults. At least 100,000 boys and girls under the age of 15 become permanently disabled every year. As these disabled children become disabled adults, they will every day of their lives require of their family, friends, and society, an additional quota of energy, interest, assistance and money.

The Surgeon General estimates that injuries and resulting disability cost our Nation more than $107 billion each year.

As Chairman of the National Safe Kids Campaign, I have one more reason to urge the reauthorization of the CPSC. They are an essential player in the public-private partnership which drives the Campaign. The Campaign's successes in the fight against childhood injury are, in no small part, due to the unique collaboration between private organizations and agencies of the Federal, State, and local governments.

Never before in history has such a large network been formed and successfully motivated to prevent childhood injury.

The CPSC is a member of the Campaign's National Coalition for the Prevention of Childhood Injury, and has already played an exemplary role in the Campaign. If reauthorized by the Senate, I have no doubt that they will continue to be a strong ally.

Mr. Chairman, we must continue to work and to promulgate and give the CPSC an opportunity to function to guarantee that our children do not become victims of national neglect. I therefore strongly urge you to reorganize and reauthorize the Consumer Product Safety Commission.

Thank you very much, sir.

Senator BRYAN. Thank you very much, Dr. Eichelberger.

Mrs. Peterson, if I might ask you a question, you commented in your prepared testimony as to the importance of getting qualified individuals to serve on this commission.

As you will note from the draft of the bill that we have circulated, we emphasized that point in the draft.

I would like to ask you what type of experience, what qualities should we look for in considering people to serve on this commission?

Mrs. PETERSON. I think, first, there has to be a commitment to the agency and a belief in the mission that Congress gave it. You have to have people who are committed to the idea and want to serve.

My experience has been if you have people who believe in the mandate that is given, it makes a difference.

Of course, I think technical training is extremely important, and people who have sufficient—it does not have to be only in the safety area, but it has to be in concomitant areas—training are important. But I think really a belief in the mission of the agency is paramount.

Senator BRYAN. Dr. Eichelberger, if I might ask you, would you share with us a little bit your perspective. Are we making progress in safety issues? Are we just holding our own? Are we slipping behind?

Share with us, if you will, your perspective of where we are on these overall issues.

Dr. EICHELBERGER. Well, sir, my concern is that on a daily basis, I see children who sustain clearly avoidable injuries. I think these preventable injuries have a lot to do with educating the public.

The CPSC I think has that role, which is to call to task different agencies, different groups, to allow us to put into the marketplace and to educate parents about products that are safe for their kids.

I, unfortunately, think that, if anything, we are merely holding or treading water, because over the last ten years, there has been significant progress, as Mrs. Peterson has suggested, in safety. Poisonings of children have decreased significantly Crib deaths have gone down. But we still have problems, as I am sure you are aware, with the ATVs, where it is clear to me these children should not be on this instrument of death.

From my standpoint, it is absolutely outrageous that there is even a discussion about it.

It is the type of thing where we, as people who have to protect our children, our most important national resources, should not even have to address this issue. But we need some way, some forum, some mechanism where we can express these opinions and do it in some rational way, so that we can hear the counterpoint.

Senator **Bryan**. As a followup to my question, tell us a little bit about the Safe Kids Campaign. What are you involved in and what are you doing as an organization?

Dr. **Eichelberger**. Well, sir, one of the really heartening experiences that I have had in my career is to find out that people in the community really are interested and want to prevent childhood injury.

To address this, we have been trying to put together coalitions in different locales around the United States. Right now, there are 65 local coalitions in approximately 36 States that are taking on the issue of addressing preventable injuries to children below the age of 15.

The focus is to try to get the public to, number one, become aware of the fact that the leading cause of death in the United States today is not cancer, it is not gunshot wounds, but unintentional injuries that kids sustain, which we can do something about.

Once we make people aware of that, then we can get the community to realize that they can do a lot of things for themselves, to change on a voluntary basis a lot of the guidelines, such as putting stop lights on the right roads, making sure that the drunk driver does not get back on the roads, to makes sure that the ATVs, that parents are aware and understand that they should not allow their kids to be on these types of instruments.

I think that, once we have done that, then we can start to change public policy. But there is no way that we can start to change the number of kids that come into our trauma center on a daily basis without preventing these injuries.

As you well know, once you have an injury, the worst thing that can happen is a disability that is lifelong, because it goes into the billions of dollars for these kids and families.

Senator **Bryan**. What type of groups do you seek to involve in the coalition?

Dr. **Eichelberger**. The coalition right now is made up of a real cross-section of the United States—the Boy Scouts of America, the National Safety Council, the Consumer Product Safety Commission, various Federal agencies, such as Maternal and Child Health, the Department of Health and Human Services, the AAA, the American Association of Retired People, the Druggists Association of America.

The other thing that I think is extremely important is that most of these people are the people who live in the community and who work in those communities.

Probably I think really heartwarming to me was the fact that a corporation like the Johnson & Johnson Company has provided $5 million over a five year period as a gesture to the community to help us solve this problem. I think there is a corporate ethic here. What we are trying to do is to explain to corporate America that they have a responsibility in the local communities from which they make their profits and their livelihoods to help us prevent injuries to children which, in the future, will be the labor force that they use.

Senator **Bryan**. Dr. Eichelberger, thank you very much.

I will yield now to Senator Gorton.

Senator GORTON. Doctor, I am going to start by sharing an experience that your testimony has brought back to me.

Sixteen years ago this next summer, I took my entire family, including my 11 year old daughter, and started from our home in Olympia, Washington, and bicycled to Boston, Massachusetts, without helmets. Helmets were not something that were even considered by most bicyclists then.

We got as far as Fairview, Pennsylvania, and I got hit by a hit and run driver while riding in the back of this group, which knocked me and my daughter off our bicycles. Fortunately, I managed to hit on my forearm, rather than my head.

Senator BRYAN. Was the driver a Washingtonian?

Senator GORTON. No, the driver was a good Pennsylvanian.

But the necessity for that kind of protection was certainly brought to bear on my consciousness at that point in the most forceful, possible manner. I wish I had that kind of equipment.

In fact, if we had known about it or had it at the beginning of our trip, I probably would have felt less apprehension about beginning that wonderful family adventure.

You have spoken very forcefully about the children you see who have suffered from accidents, which might have been prevented by helmets.

I am not quite certain from your testimony, however, as to just what you feel it is that the Consumer Product Safety Commission should do with respect to bicycle helmets—simply publicize them more, impose some kind of product requirement, or suggest to Congress a requirement that helmets be worn when bicycling by everyone under 16, or by everyone?

How would you reach the goals of fewer preventable head injuries in bicycle accidents, very specifically?

Dr. EICHELBERGER. As a parent, you bring to mind for me, on a daily basis, the questions that they ask me. Number one is "why my child," and number two is "what could I have done?"

What we are addressing today is "what could I have done?" I mean, what can we do to prevent these injuries from occurring.

I think the commission has a responsibility to establish a standard. Right now, there are two standards, an ANSI standard and a SNELL standard, both of their own volition, with varying stringent sections of it.

I think that the Product Safety Commission could establish a standard by which all of us could be measured against.

Senator GORTON. By which all helmets could be measured against?

Dr. EICHELBERGER. Yes, all helmets could be measured against.

I think we are talking about the product, the helmet itself. Your State happens to be one of the leading States in the whole issue of bicycle helmet utilization. Because of that, number one, we have information. We have that information because it was beaten out of the data bases that are really very limited.

Right now, the National Electronic Injury Surveillance Survey that has been part of the CPSC is probably one of the most useful surveillance tools that we have. What we need to do is, number one, find out that the problem is there, and, number two, take the product and make sure that that product can withstand the crash of the head striking the cement.

That, basically, is all that I personally am asking for. I think once we have that standard and it is promulgated, then what will occur as a consequence is that the community will understand, number one, that there is a Federal standard that exists, and, number two—let me tell you this.

This weekend, we went to the local Toys R Us. You might want to do that sometime in your local area here in Washington, and ask them if they even know if there is a standard for helmets, and look at what they are selling on their shelves. They are plastics that would not withstand anything.

Unfortunately, the parents go in and buy it because somebody said it was important to get a helmet, but nobody says which helmet.

I think that is where the Federal Government and this kind of commission could help us.

Senator GORTON. What percentage of children wear helmets?

Dr. EICHELBERGER. Right now, I would say approximately 5 percent of children wear helmets. And in your State, where there has been a major effort over the last 2 and a half years, that has been increased to 16%, which is a significant increase.

Senator GORTON. And perhaps that is the most significant goal we should be seeking of all, isn't it, actually to get people to wear them?

Dr. EICHELBERGER. Well, the problem is if they are wearing the appropriate helmet, that's fine. If the product that is being used by these children really is going to protect them—because they may be wearing them, but it may not make any difference at all.

Senator GORTON. Everything you have said, I take it, however, is equally applicable to motorcycle helmets. Is there a CPSC standard on the adequacy of motorcycle helmets?

Dr. EICHELBERGER. No, sir, there is not. I agree with you 100 percent.

I think it is absolutely incredibly stupid for people to ride a motorcycle without a helmet. It is the kind of thing where all they have to do is spend a little time with me and we will demonstrate to them how foolish this is.

What it does, sir, is it means that you and I, as the community, take on the responsibility for paying for the care of these individuals. The problem is that everybody is concerned about the cost of medicine today.

Well, there are a lot of things that we can do that are very cost effective and cheap to prevent and reduce that large expenditure for medical care in the United States today.

Senator GORTON. My time is almost up.

I would just like a comment from both you, Doctor, and from you, Mrs. Peterson concerning one final question.

Assuming the relatively modest budget of the CPSC, and assuming that it is not going to get to a level that you would consider to be adequate in the immediately foreseeable future, how do you think we should address or establish appropriate public policy for the Consumer Product Safety Commission to follow when setting priorities? In a world in which there are literally hundreds, perhaps thousands, of either safety standards or publicity campaigns which ought to be engaged in, how should the CPSC choose among them? What kind of procedures should it have to say this is the most important thing, or here are the most important dozen areas of our expertise that we should concentrate on now, and later move on to those perhaps less important, though still important, things?

Mrs. PETERSON. I think a lot of it depends on who administers, who the staff is, who is there in setting priorities. But, even saying that, I would hope that you all would make every effort to have full funding.

It is terribly important, and I am sure that a lot of us will be willing to walk the corridors to help. This is because there is a sentiment throughout the country that safety is something people are willing to pay for. I think we have shown the cost effectiveness of it.

I think we have to use economic arguments to show the cost effectiveness of full funding.

So I would really rather not say what we would do with a little bit. I would like to see the agency fully funded if it is at all possible, and then hope, hope that it is staffed by a commissioner and by people who are sensitive and who will evaluate the statistics that you bring forward and that we all bring forward to help set the priorities.

I would hope, first, that being well staffed and well funded, it will be able to carry out the job that Congress has given it.

Dr. EICHELBERGER. Senator, I think we have to be reasonable.

Mrs. PETERSON. Oh, am I not reasonable?

I'm an optimist.

Dr. EICHELBERGER. Oh, I agree with everything you've said, Mrs. Peterson. I think we have to be reasonable in what we expect, and I think we have to be pragmatic.

But I think if we cut corners and don't do the best that we can, when your child and my child are hurt because of a product that we could have better made or kept off the market, then we are going to feel that we have not done everything possible to improve the quality of the environment that our kids live in today.

I think the only way to do that is to appoint reasonable people who are intelligent, who have a commitment, and give them the opportunity to establish a forum, develop a consensus, make some compromises, and come forth with the best product recommendations that we have available in our country today.

Mrs. PETERSON. May I just add one little thing here? You mentioned compromises.

I was fortunate in being able to do some work with Mrs. Roosevelt, and we had in the legislative battles to compromise tremendously. I will never forget her saying to me, "But, Esther, you must compromise; but be sure that you compromise upwards."

I think that is what I would hope the staff of Congress would do.

Senator GORTON. Thank you both very much.

Senator BRYAN. Mrs. Peterson, we appreciate those comments.

Dr. Eichelberger, thank you very much for joining us. We appreciate both testimonies which you have given today and your prepared comments.

Our next panel consists of the Hon. Anne Graham, who is Acting Chairman of the Consumer Product Safety Commission. Joining her on the panel will be Commissioner Carol Dawson.

Thank you both for joining us. We will call upon you first, Ms. Graham.

STATEMENT OF ANNE GRAHAM, ACTING CHAIRMAN, CONSUMER PRODUCT SAFETY COMMISSION, ACCOMPANIED BY CAROL G. DAWSON, COMMISSIONER

Ms. **Graham**. Thank you, Mr. Chairman, Senator Gorton.

I appreciate the opportunity to appear today before the subcommittee to strongly advocate the reauthorization of the Consumer Product Safety Commission.

I welcome this reauthorization process because I believe it presents a unique opportunity to focus on the Commission's present and future agenda.

Mr. Chairman, I believe the Commission is entering a new era. It is an era where reasoned government action is the rule and not the exception. Reasoned Commission action reflects a pragmatic approach to solving safety problems, and recognizes that regulation is only one of many options that can be employed to address safety issues.

It is a Commission that works with both industries and consumers to encourage preventive, rather than reactive, safety. This Commission will not hesitate to move forward on necessary safety initiatives, and we will not hesitate to actively assert our authority when reasonable safety precautions are not instituted.

Yes, we will work actively with industry to achieve safety goals, and we expect, as is often the case, that industry will respond reasonably. But if safety is not the goal of a certain industry or manufacturer, the Commission stands ready to protect the consumer expeditiously and without compromise.

The future provides us a real opportunity to renew and energize our commitment to consumer safety. Reauthorization will help accomplish this goal. It will provide positive direction for the Commission and will be important in helping the Commission achieve the credibility it needs and deserves.

Reauthorization will allow the Commission to rebuild and look to the future with confidence and with certainty regarding our resources and our priorities. It will send a clear message that the Commission's mandate is important.

During this reauthorization process, the fact that the Commission now lacks a quorum cannot be ignored. Clearly, this is a problem that must be resolved in order for the Commission to fully execute its responsibilities and obligations.

I am confident that the Administration will nominate a third Commissioner who believes in the mandate of the Commission, and who will deal fairly with the Commission's constituents and with industry.

In the interim, there are certain activities that cannot take place without a quorum. Nonetheless, there are many important activities that are taking place and that will help us move forward and define our future agenda.

The Commission is undertaking safety initiatives in a number of key areas. Foremost among these areas are issues affecting the safety of children. When safety affects individuals who are vulnerable, particularly children, I believe the Commission has a special obligation to provide protection. I intend to continue to do everything I can to advance this cause.

The Commission's association with the "Safe Kids" Campaign is a measure I strongly endorse. This national coalition includes some 65 organizations, consisting of Federal and State agencies, industry, professional associations, and individuals dedicated to accident prevention, primarily through educational efforts.

The "Safe Kids" Campaign has identified five leading risk areas. Four of these fall squarely within the Commission's jurisdiction and are currently being addressed by the Commission as priority projects, rulemaking efforts, or significant Commission voluntary standard activities.

The Commission is also actively involved in cooperative efforts with groups, such as the American Academy of Pediatrics and participating pediatricians to alert parents of infants about unsafe children's products. For instance, the Commission regularly notifies approximately 4,000 pediatricians nationwide about major recalls of hazardous toys and childrens' products. This unique and innovative method of alerting parents to product hazards, as well as to general safety precautions, has been effective in helping to eliminate injuries and deaths to young children.

I would also like to say a word about one rulemaking effort in the children's area that was recently completed. I refer to lawn darts. As I am sure the Subcommittee will be pleased to hear, the lawn dart ban went into effect in December. To date, the results of our enforcement efforts have been positive. The majority of retailers who have been contacted have stopped selling lawn darts, are aware of the ban, and have returned the lawn darts in stock to the original distributors. In short, I think the lawn dart ban legitimately can be called a success.

In summary, the mandate of this Commission not only continues, but is moving forward. I will continue to explore new areas of cooperation with industry, concerned groups, and consumers, to address the very pressing issues that confront us.

The Commission's agenda will no longer only be a reactive one. We will anticipate safety problems and work actively to prevent them. We will move forward with needed regulations, particularly in the areas that affect the safety of our children. We will work with industry to provide guidance on product safety issues and to encourage them to incorporate safety into the design of products that are sold in the United States. Americans have the right to assume that the products they buy are safe. I look forward to working with you. Together we can insure the mandate of this Commission is accomplished.

Thank you.

[The statement follows:]

U S CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D C 20207

Statement By
Anne Graham, Acting Chairman
U.S. Consumer Product Safety Commission
Before the
Subcommittee on Consumer
U.S. Senate

March 13, 1989

Mr. Chairman, I appreciate the opportunity to appear before the Subcommittee to advocate the reauthorization of the Consumer Product Safety Commission.

I welcome this reauthorization process because I believe it presents a unique opportunity to focus on the Commission's present and future agenda. Mr. Chairman, I believe the Commission is entering a new era. It is an era where reasoned, and I emphasize the word reasoned, government action is the rule, and not the exception. Reasoned Commission action reflects a pragmatic approach to resolving safety problems and recognizes that regulation is only one of many options that can be employed to address safety issues. It is a Commission that works with both industries and consumers to encourage preventive, rather than reactive, safety. This Commission will not hesitate to move forward on necessary safety initiatives, and we will not hesitate to actively assert our authority when reasonable safety precautions are not instituted. Yes, we will work actively with industry to achieve safety goals, and we expect, as is often the case, that industry will respond reasonably. But, if safety is not the goal of a certain industry or manufacturer, the Commission stands ready to protect the consumer expeditiously and without compromise.

The future provides us a real opportunity to renew and energize our commitment to consumer safety. Reauthorization will help accomplish this goal. It will provide positive direction for the Commission, and will be important in helping the Commission achieve the credibility it needs and deserves. Reauthorization will allow the Commission to rebuild and look to the future with confidence and with certainty regarding our resources and priorities. It will send a clear message that the Commission's mandate is important.

During this reauthorization process, the fact that the Commission now lacks a quorum cannot be ignored. Clearly, this is a problem that must be resolved in order for the Commission to fully execute its responsibilities and obligations. I am confident that the Administration will nominate a third Commissioner who believes in the mandate of the Commission and who will deal fairly with the Commission's constituents and with industry. In the interim, there are certain activities that cannot take place without a quorum. Nonetheless, there are many important activities that are taking place and that will help us move forward and define our future agenda.

The Commission is undertaking safety initiatives in a number of key areas. Foremost among these are issues affecting the safety of children. When safety affects individuals that are vulnerable--particularly children--I believe the Commission has a special obligation to provide protection. I intend to continue to do everything I can to advance this cause. One important way to do this is, of course, to make the resource commitment necessary to achieve the desired safety goals. In this regard, I would note that almost 50% of the Commission's current budget is allocated to issues affecting children.

Nowhere is the need for preventive safety more critical than in the area of childhood safety. Preventive safety has two basic components: education and, of course, producing safe products.

Every child's education should include an awareness of the hazards potentially associated with the products they use and an understanding of the steps that can be taken to prevent accidents. To promote this objective, the Commission has developed a resource guide for teachers of grades three through six. This guide, which has been distributed to at least 38 state departments of education over the past several years, encourages teachers to incorporate consumer product safety education into their curricula. The ultimate goal is to increase young children's awareness of potential hazards of specific consumer products, such as playground equipment, roller skates, bicycles, skateboards, toys, and general hazards, including home fires, poison prevention, and electrical safety. Providing this needed safety information to our children will help educate them on how to avoid product related injuries and deaths.

Similarly, the Commission's association with the "Safe Kids" campaign is a measure I strongly endorse. This national coalition includes some 60 organizations, consisting of federal and state agencies, industry, professional associations, and individuals, dedicated to accident prevention, primarily through educational efforts. The "Safe Kids" campaign has identified five leading risk areas. Four of these fall squarely within the Commission's jurisdiction and are currently being addressed by the Commission as priority projects, rulemaking efforts, or significant Commission voluntary standards activities. These four areas are drownings, fire/burns, falls, and choking/poisonings.

The Commission is also actively involved in cooperative efforts with groups such as the American Academy of Pediatrics and participating pediatricians to alert parents of infants about unsafe children's products. For instance, the Commission regularly notifies approximately 4,000 pediatricians nationwide about major recalls of hazardous toys and children's products. In some instances, more than 20,000 pediatricians have been reached. This unique and innovative method of alerting parents to product hazards, as well as to general safety precautions, has been effective in helping to eliminate injuries and deaths to young children.

The second component of prevention is, of course, ensuring that the products children use are safe and conform to the requirements of Commission regulations and voluntary standards. The Commission is currently involved in three rulemaking proceedings that address major areas of childhood injury. These rulemakings involve choking hazards associated with small parts in toys, child-resistant lighters and Poison Prevention Packaging Act (PPPA) protocol revisions. In all three proceedings, the Commission is in the process of collecting and analyzing the technical and injury data that will define and support any final rule that may be issued. This is no small task. For example, the issues raised in the advance notice of proposed rulemaking (ANPR) on small parts involve complex questions, such as the appropriate size of a test cylinder that will accurately identify small parts that present choking, aspiration, or ingestion hazards to children under three. The Commission has approved the establishment of a medical advisory committee which has the expertise needed to help us address and resolve this issue.

Similarly, the work being conducted by the Commission to support the PPPA protocol revisions is addressing the difficult issue of how to design a child resistant package that can still be used by the elderly, since data show that a very high number of accidental ingestions of prescription drugs involved a grandparent's or an older relative's medicine. The Commission's work will advance the state of the art in child-resistant packaging design, by making available innovative packaging developed by the Commission through university grants.

The issues presented by the ANPR on child-resistant lighters are no less complex. They involve developing a testing protocol to determine that lighter modifications will, in fact, be more child resistant that those currently on the market. Our approach involves the use of panels of children to evaluate various lighter designs, using surrogate models that do not ignite or produce a flame. These models were specially developed for this purpose. These surrogate lighters will accurately test resistance to operation by a child, leading to a child-resistance performance standard that all future lighters will have to meet.

I also would like to say a word about one rulemaking effort in the children's area that was recently completed. I refer to lawn darts. As I am sure the Subcommittee will be pleased to hear, the lawn dart ban went into effect on December 19, 1988. To date, the results of our enforcement efforts have been positive. The majority of retailers who have been contacted have stopped selling lawn darts, are aware of the ban, and have returned lawn darts in stock to the original distributors. To date, about eight retail violations have been found by Commission staff, each involving less than 10 packages of lawn darts. The Commission will continue its surveillance of the market place this spring and summer to ensure that lawn darts are off the retailers' shelves. In short, I think the lawn dart ban legitimately can be called a success.

We also are aggressively enforcing our laws and regulations. Compliance and Enforcement, the largest single Commission program, is responsible for enforcing presently existing safety regulations, identifying consumer products that have substantial hazards, and facilitating the correction and recall of significant numbers of hazardous products from the market. The majority of these efforts are directed at child safety. For example, during FY 1988, 368 models of noncomplying toys and children's products were identified and appropriate corrective action was taken. 72% of these had small parts violations. Also during FY 1988, there were 18 recalls of toys and children's products presenting serious hazards not addressed by Commission regulations. These also resulted in recalls or corrective action plans.

An important component of our enforcement effort is the joint on-the-dock surveillance program in cooperation with U.S. Customs Service. During FY 1988, approximately 836 shipments totalling over 85 million units of violative toys, bicycles, children's sleepwear, and fireworks, were prevented from entering the American marketplace.

While I have focused on what the Commission is and will be doing in the childhood injury area, I acknowledge the significant efforts of the children's products industry in helping the Commission promote safety. The Commission alone cannot prevent childhood injuries. We need and welcome the cooperative help of the industry. One such cooperative effort involves the toy industry's work in familiarizing foreign manufacturers with Commission regulations so that fewer non-complying toys can enter the United States. Another example of this cooperative effort occurred last month, when the Commission and a major trade association, Toy Manufacturers of America, jointly conducted safety seminars for industry members at the New York Toy Fair, the largest gathering of firms interested in the children's product area. The Commission also provides information to associations that, in turn, issue bulletins to their foreign and domestic members.

Equally important, industry continues to work with the Commission on a number of important voluntary standards in the children's product area. These include home and public playground equipment, cribs, bunk beds, and pool covers. This is in addition to important voluntary standards that have already been developed covering products such as cribs, play-pens, high chairs and strollers. In addition, the Commission is evaluating the effectiveness of other voluntary standards, such as ones covering bike helmets.

I have chosen to focus this testimony on the work the Commission is doing to promote preventive rather than reactive safety in the childhood injury area because I believe this area to be a significant item on our future agenda. However, it will not be the only item. The Commission is moving forward on a number of key product safety issues.

Particularly noteworthy is the progress being made in the availability of flame resistant nightwear for the elderly. In 1986, the latest year for which complete data are available, there were 179 deaths associated with clothing fires. Fully 75% of these deaths occurred among persons 65 years of age and older. The Commission believes that if the relative flame resistance of these garments was known to prospective purchasers through a label most consumers would choose the safer product. This approach has been suggested to the industry, and they have provided a generally positive response. We expect a specific proposal from the industry this spring. If acceptable to the Commission, we believe this proposal will help us reach our goal of safer nightwear for the elderly.

As you know, Mr. Chairman, I opposed the ATV consent decree because I do not believe this decree went far enough. Nonetheless, enforcement of this decree is one of my paramount concerns and that of the Commission.

In April 1988, the court approved a consent decree with the ATV industry which included a stop sale of three-wheeled ATVs, required warning labels, a safety awareness program utilizing print and television media, free training, and mandatory labeling recommending against the use of adult-sized ATVs by children under the age of 16.

The Commission is continuing the monitoring and enforcement of these provisions. In doing this, we have worked closely with state governments. The Commission staff's monitoring effort in FY 1990 will focus primarily on serious violations of the ATV consent decree.

In October, the Commission also accepted a voluntary standard for ATVs, covering most of the areas the Commission had identified as important, with the exception of lateral stability. It was agreed that an interim lateral stability value would eventually be replaced by a new one, either developed by industry or the Commission. During FY 1990, our engineering staff will continue to address the lateral stability and transient handling issues, and injury data collection will continue. Finally, if industry fails to develop or adjust the lateral stability standard, the Commission staff will prepare the analysis necessary for a notice of proposed rulemaking for lateral stability.

Another critical area the Commission will emphasize is the importance of working closely with industry to provide guidance on safety. This is, perhaps, the best way to ensure that the preventive, rather than reactive, safety goal is achieved. For example, the Commission is working with various firms to assist them in developing product safety assurance programs that will identify any potential hazards or quality control problems before the product reaches the market. As part of this safety assurance effort, the Commission also intends to provide guidance to the industries we regulate, stressing "preventive" measures manufacturers can take to minimize safety problems.

One recent effort along these lines involves a "Recall Handbook" that was developed by the Commission. This handbook is intended to assist manufacturers in identifying, and taking actions to correct, safety problems. The handbook, which is being sent to appropriate manufacturers, importers, distributors, and retailers, provides easily understandable guidance on how to identify product defects and, when appropriate, how to report such defects to the Commission. The book also stresses the importance of preventive measures a company can take to limit its exposure to product recalls, thereby reducing its expenditures in the event a recall is necessary.

In short, the mission of this Commission not only continues but is moving forward. I will continue to explore new areas of cooperation with industry, concerned groups, and consumers to address the very pressing issues that confront us. The Commission's agenda will no longer be only a reactive one. We will anticipate safety problems and work actively to prevent them. We will move forward with needed regulations, particularly in those areas that affect the safety of our children. We will work with industry to provide guidance on product safety issues and to encourage them to incorporate "safety" into the design of products that are sold in the United States. Every citizen has a right to assume that the products he or she buys are safe.

I look forward to working with each member of the Subcommittee. Together we can ensure that the mission of the Consumer Product Safety Commission is accomplished. Thank you.

Senator **Bryan**. Thank you very much, Ms. Graham.

Ms. Dawson.

Ms. **Dawson**. Thank you, Mr. Chairman.

Thank you for the opportunity to appear before this Subcommittee to provide my thoughts on the reauthorization of the Consumer Product Safety Commission and to review the Commission's recent activities.

Having served as a Commissioner since 1984, I share the Subcommittee's strong interest in and commitment to the Commission's safety mission. I would like to say at this point that I was delighted to hear that Mrs. Peterson, for whom I have a high regard, had some kind things to say about the accomplishments of the Commission. I hope from now on she will continue to be able to say those things.

Many have expressed concerns about our present lack of a quorum to do business. While there are some actions the Commission cannot take until a quorum is restored, I can assure you that the Commission is utilizing all lawful means to protect American consumers from hazardous products during this period.

The Commission's staff, working with the U.S. Customs Service, continues to seize noncomplying toys, fireworks, bicycles, and other dangerous goods at ports before they enter American markets. Products having defects, which could present a substantial risk of injury, are being removed from the marketplace through voluntary corrective action plans, worked out between our compliance staff and the manufacturers.

Voluntary standards activities, hazard assessment work, and public safety information programs are all going forward as planned during this period.

As you may recall, CPSC initiated several rulemaking activities during the past year. These include an ANPR on hazards associated with children playing with cigarette lighters, and another ANPR on choking hazards associated with small parts in items intended for children under three. Work on these issues is continuing.

Staff is monitoring implementation of the ATV consent agreement and enforcing the recent ban on lawn darts.

Lacking a quorum, however, the Commission must defer decisions regarding petitions, rulemaking, certain types of legal activity, and any major change in day-to-day operations.

We all hope that this current problem will be resolved soon, when the President nominates and the Senate confirms another Commissioner. Meanwhile, the larger issue of the reauthorization of the CPSC is a matter of mutual concern of this Subcommittee and of the remaining two Commissioners.

The current statutes are basically sound. They have served the American public well over the years.

I would urge the members of this Subcommittee and the rest of the Congress to support CPSC's reauthorization and to work for ultimate passage this year. My hope is that the final legislation would help stabilize the Commission so that its staff and its Commissioners can move forward with all our activities in a competent, business-like manner. Such a period of stability is greatly needed.

Sensational headlines of the past might have obscured some of the tangible benefits to the public which the Commission has achieved and continues to provide.

Lest it be forgotten, in the 15 years since its establishment, CPSC has achieved a much greater margin of safety for the American public.

I believe that through the diligent enforcement of its regulations, through cooperation with voluntary standards organizations, and through negotiating corrective action plans for specific products, CPSC has contributed to the higher levels of consumer safety.

I also believe that it is significant that in Fiscal Year 1988 and the first quarter of Fiscal Year 1989, the Agency, in cooperation with manufacturers, conducted a total of 146 recalls, involving over 36 million regulated products. Many of these recalls are still ongoing.

In that same period, under its Section 15 authority, the Agency negotiated a total of 143 corrective action plans, affecting over 3.4 million unregulated products.

The sum of both regulated and unregulated products is 221 recall actions, covering almost 40 million units of products.

Besides using a mix of available tools under the statutes; rulemaking, enforcement, compliance, and voluntary standards support, the Commission also has a duty to become the catalyst for broader safety campaigns, where no single approach suffices.

Such an activity is most clearly demonstrated by CPSC's support of and involvement in the effort to reduce deaths due to childhood drownings, which is the second leading cause of death to children under five in the United States.

The Commission's figures were recently underscored when a new study on childhood injuries by the Johns Hopkins Injury Prevention Center was announced. The Hopkins report confirms that in the age one to four group, drowning deaths are second only to deaths associated with motor vehicles.

I have been a particularly active proponent of greater efforts to reduce the senseless loss of life associated with these childhood drowning accidents. And, while much has been accomplished through the National Swimming Pool Safety Committee, which the Commission helped found and which is in its third year of sponsoring Operating Water Watch, the fight has just begun.

Aside from the public awareness effort, the Commission has developed a model code proposal to specify requirements for swimming pool barriers, has assisted in work on a pool cover standard, which is almost ready for final approval, and is promoting a strategy for teaching CPR in schools.

In Fiscal Year 1990, the Commission will expand these activities to focus on diving injuries as well.

As part of the Commission's activities on childhood drowning, I visited with many parents who have been involved with the drowning issue. One of them, Dollie Brill, of Newport Beach, California, turned her young daughter's near drowning into a personal crusade. A recent news item in the "Orange County Register" Feb. 6, 1989 of Santa Ana, California, focuses on this energetic mother's effort to help reduce the high rate of drowning in her own area. I ask your permission to enter this article into the record.

Senator BRYAN. Without objection, it will be so entered by reference.

Ms. DAWSON. Thank you.

Her activities resulted in the formation of the National Drowning Prevention Network. She continues to work cooperatively with the CPSC and with the National Swimming Pool Safety Committee in a concerted campaign to achieve a positive, public response to the need for pool barrier laws, development of safer pool covers, and for continued educational efforts.

I believe CPSC has had a significant role in this grass roots effort, and it is my intention to see that CPSC does not relax those efforts.

Finally, while I realize it is not possible to satisfy every critic, I believe it is now time to reassess our position honestly, make realistic plans for the future, and rededicate ourselves to our most important mission, public safety.

While some would disagree with specific measures that we have taken or declined to take, I strongly believe that the overall record is one which is remarkably positive, especially in view of the sometimes difficult conditions under which we work.

Thank you, Mr. Chairman.

I welcome your questions.

[The statement follows:]

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Statement of
Commissioner Carol G. Dawson
before the
Subcommittee on Consumer
Committee on Commerce, Science
and Transportation
United States Senate
March 13, 1989

Mr. Chairman, thank you for the opportunity to appear before this subcommittee to provide my thoughts on the reauthorization of the Consumer Product Safety Commission and to review the Commission's recent activities. Having served as a Commissioner since 1984, I share this Subcommittee's strong interest in and commitment to the Commission's safety mission.

Many have expressed concerns about our present lack of a quorum to do business. While there are some actions the Commission cannot take until a quorum is restored, I can assure you that the Commission is utilizing all lawful means to protect American consumers from hazardous products during this period. The Commission staff, working with the U.S. Customs Service, continues to seize noncomplying toys, fireworks, bicycles, and other dangerous goods at the ports before they enter American markets. Products having defects which could present a substantial risk of injury are being removed from the marketplace through voluntary corrective action plans worked out between our compliance staff and the manufacturers. Voluntary standards activities, hazard assessment work, and public safety information programs are all going forward as planned during this period.

The Commission initiated several rulemaking activities during the past year. These include an ANPR on hazards associated with children playing with cigarette lighters and another ANPR on choking hazards associated with small parts in items intended for children under three. Work on these issues is continuing. Staff is monitoring implementation of the ATV consent agreement and enforcing the recent ban on lawn darts.

Lacking a quorum, however, the Commission must defer decisions regarding petitions, rulemaking, certain types of legal activity and any major change in the day-to-day operations of the Commission. We all hope that this current problem will be resolved soon when the President nominates, and the Senate confirms, another Commissioner. Meanwhile, the larger issue of the reauthorization of the CPSC is a matter of mutual concern of this subcommittee and of the remaining two Commissioners.

Since 1983, when the Commission's 1981 authorization expired, various controversial issues have contributed to the delay in congressional action on a final reauthorization bill. Now that we are entering a new phase in the history of CPSC, it seems prudent to approach the current CPSC reauthorization by avoiding substantive changes which could imperil its adoption. I continue to support the structural changes, i.e., providing for a two-member quorum and measures designed to provide greater staff accountability--amendments which this subcommittee supported in the last Congress.

The current statutes are basically sound. They have served the American public well over the years. I would urge the members of this subcommittee and the rest of the Congress to support CPSC's reauthorization and to work for ultimate passage this year.

My hope is that the final legislation would help stabilize CPSC, so that its staff and Commissioners can move forward with all our activities in a confident, businesslike manner. Such a period of stability is greatly needed.

The sensational headlines of the past may have obscured the tangible safety benefits to the public which the CPSC has achieved and continues to provide. Lest it be forgotten, in the 15 years since its establishment, CPSC has achieved a much greater margin of safety for the American public. The facts are noteworthy. Between 1975 and 1983, there was an estimated 25 percent decline in the death rate associated with consumer products when the population increase for that same time period is considered. The estimated 26,500 deaths per year associated with consumer products in 1975 dropped to 21,900 in 1984. While no one would claim all the credit for CPSC, I believe that through the diligent enforcement of its regulations, through cooperation with voluntary standards organizations, and through negotiating corrective action plans for specific products, CPSC has contributed to the resulting higher levels of consumer safety.

In this connection I must commend those conscientious professionals on the agency's ~~staff~~ who served their country well even under very difficult conditions.

Aside from using its rulemaking authority, CPSC can act forcefully and quickly to remove dangerous products from the marketplace through two main activities. The first is in vigorously enforcing its current regulations; and the second is in utilizing its Section 15 authority to achieve recalls or corrective action plans when it is believed that a product meets the level of a substantial product hazard.

I believe that it is significant that in FY88 and the first quarter of FY89, the agency, in cooperation with manufacturers, conducted a total of 146 recalls involving over 36 million regulated products. Many of these recalls are still ongoing.

In the same period, under its Section 15 authority, the agency negotiated a total of 143 corrective action plans affecting over 3.4 million unregulated products. The sum of both regulated and unregulated products is 221 recall actions covering almost 40 million units of products.

While the complete list is too long to recite, I would like to mention just a few of the more significant products which were kept out of the chain of distribution through CPSC's intervention in the last year.

Examples of Section 15 recalls and corrective actions include the Fisher-Price Pop-Up Playhouse, involving more than 350,000 units which could unexpectedly come apart and cause serious eye or other injury to children or adults; the Whirlpool under the counter dishwashers that create a fire hazard under certain conditions; and the Diver Unlimited dive valve that was found to malfunction, presenting the possibility of serious injury or death to the diver.

Examples of CPSC recalls of regulated products include two Kellogg Company promotional toys that failed to comply with CPSC's small parts regulations. Approximately 30 million of these items were distributed nationally. A "Pop Up Answer Phone" was recalled by the manufacturer because an antenna piece could separate from the toy telephone receiver and cause a choking hazard for young children. Twenty thousand units are being recalled. A final example involves yet another children's toy, a "Cook N Clean Kitchen," because small plastic parts may come off the toy and could pose a choking hazard to young children. If CPSC had not been there to act quickly, we might have seen many more deaths and serious injuries as a result.

In addition to its rulemaking and enforcement/compliance activities, the agency continues to increase safety margins for consumers by working with manufacturers on voluntary standards projects. An excellent example of such activity is CPSC's work with furniture manufacturers in addressing certain hazard patterns associated with bunk beds used by young children. While the Commission denied a petition calling for development of a mandatory bunk bed standard, at the same time it voted officially to ask the furniture industry to take some significant steps to improve the safety of bunk beds.

Those actions included: (1) reconsideration by industry of some additional CPSC staff recommendations for inclusion in the industry's Revised Bunk Bed Guidelines; (2) submission of those Guidelines to a voluntary standards organization for approval as a consensus standard; and, (3) the development and implementation of a reliable third party certification program to assure compliance.

The industry has agreed to all three of these recommendations and the first meeting of the Task Group to address a consensus standard was held last Tuesday. In effect, CPSC work has resulted, with the full cooperation of the industry, in far-reaching measures to address the hazards of mattress support collapse, entrapment and falls from bunk beds.

In my opinion, had the Commission granted the petition and proceeded toward mandatory rulemaking, the resolution of these complex issues would not have taken place until far, far in the future. Of course, the industry knows that the Commission always reserves the right to utilize rulemaking or use its Section 15 authority should there be any breakdown in the voluntary activities I have just described.

Besides using a mix of available tools under the statute, (rulemaking, enforcement/compliance, and voluntary standards support,) the Commission also has a duty to become the catalyst for broader safety campaigns where no single approach would suffice. Such an activity is most clearly demonstrated by the CPSC's support of and involvement in the effort to reduce deaths due to childhood drownings, which is the second leading cause of death to children under five in the United States. The Commission's figures were recently underscored when a new study on childhood injuries by the Johns Hopkins Injury Prevention Center was announced. The Hopkins report confirms that in the age one to four group, drowning deaths are second only to deaths associated with motor vehicles.

I have been a particularly active proponent of greater efforts to reduce the senseless loss of life associated with these childhood drowning accidents. Last year, the Commission conducted four regional conferences on the drowning issue. They were held in Dallas, Texas; Fort Lauderdale, Florida; Phoenix, Arizona; and Indianapolis, Indiana. These meetings brought together concerned citizens from all areas of the population--pediatricians and nurses, state and local officials, swimming pool contractors and service companies,--and sadly, parents who have experienced the tragic loss of or serious injury to a beloved child. While much has been accomplished through the National Swimming Pool Safety Committee which the Commission helped found and which is in its third year of sponsoring the "Operation Waterwatch" safety campaign, the fight has just begun.

Aside from the public awareness effort, the Commission has developed a model code proposal to specify requirements for swimming pool barriers, has assisted in work on a pool cover voluntary standard which is almost ready for final approval, and is promoting a strategy for teaching CPR in schools. In FY 1990, the Commission will expand these activities to focus on diving injuries.

I am proud of the Commission's leadership in recognizing this serious national safety issue when it did. These deaths and injuries are entirely preventable.

I have visited with many parents who have been involved in the drowning issue. One of them, Dollie Brill of Newport Beach, California, turned her young daughter's near-drowning into a personal crusade. A recent news item in the Orange County Register, Santa Ana, California, February 6, 1989, focuses on this energetic mother's effort to help reduce the high rate of drowning in her own area. I ask your permission to insert this article into the record at this point.

Dollie Brill's activities resulted in the formation of the National Drowning Prevention Network. She continues to work cooperatively with the CPSC and with the National Swimming Pool Safety Committee in a concerted campaign to achieve a positive public response to the need for pool barrier laws in local codes, for the development of safer pool covers, and for continued educational efforts. There are many other such organizations which are providing leadership in this area. I believe CPSC has had a significant role in this grass roots effort and it is my intention to see that CPSC does not relax its own efforts.

Finally, let me say a few words about the Commission's future. In Fiscal Year 1990, the Commission has selected four priority projects: child drowning and diving injuries, Section 15 activities, playground equipment and cigarette lighters. These are areas on which the Commission will focus because we are sensitive to the need to protect our children and because we believe that we can make significant progress toward reducing injuries in this area. We know that regulations mandating child-resistant packaging for certain harmful drugs and household chemicals has had a measurable impact in reducing injuries to this group. Death caused by accidental aspirin ingestion among children under five years old, for example, has steadily decreased from a level of 46 in 1972 to zero in 1985 and two in 1986, the last year for which we have data.

We hope that we can make similar progress in coming years in raising the level of safety for children in the home and on the playground. We will continue to monitor compliance with the ATV consent decree, and we anticipate finalizing a voluntary standard covering ATV performance. The day-to-day enforcement of our regulations does not cease. Unsafe products will continue to be removed from our nation's markets.

While I realize it is not possible to satisfy every critic, I believe it is now time to assess our position honestly, make realistic plans for the future, and rededicate ourselves to our most important mission--public safety. While some would disagree with specific measures we have taken, or declined to take, I strongly believe that the overall record is one which is remarkably positive--especially in view of the sometimes difficult conditions under which we have worked.

Thank you, Mr. Chairman, for the opportunity to testify before the subcommittee. I welcome your continued interest in the safety of our nation's citizens and look forward to working with you as the reauthorization process moves forward.

Senator BRYAN. Thank you very much, Ms. Dawson.

Let me direct my first question to Ms. Graham.

Ms. Graham, what are the priorities that have been established for the commission in 1990?

Ms. GRAHAM. In 1990, Mr. Chairman, we will be looking at playground equipment, cigarette lighters, swimming pools, diving and drowning, and section 15 to augment the compliance effort.

Senator BRYAN. As you know from having reviewed the proposed draft, the draft language contemplates that before establishing its priorities each fiscal year there would be public hearings. What is your response to that proposal? Is it good? Is it bad?

Ms. GRAHAM. I think it is very important to have public input into what our priorities are, and, in fact, we do have public hearings before we choose our priorities, and we also solicit written comment.

Senator BRYAN. So prior to developing the priorities that you have just shared with us you did have a series of public hearings to gather public input?

Ms. GRAHAM. We did.

Senator BRYAN. In general, looking at the legislation, are there any comments that you have about the proposed bill where you feel that it needs to be strengthened, particular provisions with which you might disagree, provisions which are not there which ought to be included to make it more effective?

Ms. GRAHAM. Overall, Mr. Chairman, I was pleased to see that the quorum issue was addressed. I think this is very important, and I do have some technical concerns with the legislation that I would appreciate the opportunity to respond to in writing.

Senator BRYAN. We would appreciate that.

Ms. GRAHAM. I would be happy to do that.

Senator BRYAN. Ms. Dawson, are there any provisions of this proposed draft with which you disagree, provisions which may have been omitted, any other comments or suggestions that you might have in terms of the draft itself?

Ms. DAWSON. Thank you, Mr. Chairman. As I said in my testimony, I believe that our current statutes are fairly good. I think that they are very strong statutes.

The strength with which they are used depends upon the commissioners and the overall Commission. I agree with Acting Chairman Graham's comment concerning the quorum requirement, for example. There are also, I believe, provisions in the draft bill which address accountability of senior staff, and I do support those.

There are some provisions relating to petitions and to Section 15 and so forth. I understand their motivation as a means of strengthening our safety mission. However, like my colleague, I believe there may be some technical difficulties with some of those, and I would be happy to give you those comments in writing as well.

Senator BRYAN. We would appreciate that.

One comment that is frequently heard is the length of time in terms of the rulemaking process itself. I believe in previous testimony offered the time span has been testified to as being about four, four and a half years before a rulemaking process is completed.

As you know, under the draft that has been circularized we talk about a one-year period, with an extension for six months for good cause shown. Is that a realistic time frame in your view? Do you need some statutory guidelines?

To a lot of us who come from the state perspective four and a half years is nearly half a decade, and it seems to me we ought to be able to do a little bit better than that. I would appreciate your comment.

Ms. GRAHAM. I think, Mr. Chairman, that it really goes to the fundamental question as to whether the makeup of the Commission is dedicated to the cause, and the mandate of the Commission. I think if we have a Commission that is very interested in consumer safety then we can move forward more quickly. Sometimes it takes four years; sometimes it takes less. It depends on the complexity of the issue. But overall you need people in charge who want to make sure that safety is the first concern.

Senator BRYAN. In your experience—either one of you I invite to respond to this—have there been rulemaking proceedings in which in your opinion, assuming a fully-motivated Commission, it would take four and a half years to develop a rule? If you could, would you cite an example of one that you felt was that complicated?

Ms. DAWSON. I think there are a number of them. There are many complicating factors when you go into rulemaking on the Federal level. One important issue, of course, is that there must be adequate information on the record. There must be adequate data collected, which often takes many months.

There has to be an analysis of the comments provided by the public. There has to be an adequate analysis of whether or not the proposed rule or the proposed fix, whatever it might be, would actually reduce the risk of injury.

All of those things, unfortunately, do take many resources. And, of course, during the period of time that the Commission has been relatively low on its resources it has had to spread those kinds of efforts over many, many months. So it is really not possible, even, I think, sometimes if you had all the resources in the world, that it would not be possible to do this, some of these rulemaking procedures in the 12-month period that you are discussing.

Either we would end up doing something hasty and then we would face litigation, or maybe we would not even attempt the rulemaking. I think that there has to be some flexibility there.

Senator BRYAN. I take it from your response that you think the one-year period of time may be too short. At least I think that is what I am hearing you say.

Ms. DAWSON. Yes, I do.

Senator BRYAN. If I am correct in that assumption, do you agree that there ought to be some type of statutory parameter, if not one year, then two years, with some flexibility built into that? Either Ms. Dawson or Ms. Graham, would you comment on that?

Ms. GRAHAM. Well, Mr. Chairman, I agree with what Commissioner Dawson has been saying. I think we need to emphasize the fact that resources are fundamental in this. For example, in our 1990 budget we are going to have to delay our rulemaking on butane lighters for a year simply because we do not have the funds to do an exposure survey.

But overall I endorse the concept of finding a mechanism to increase the speed with which we rulemake when rulemaking is necessary.

Senator BRYAN. My time is nearly up, but one last question. That is, where are you in terms of the rulemakings that are presently under way? I believe you have three of those that are presently being processed by the Commission. Could you tell us where you are on those?

Ms. GRAHAM. Yes. On the choking hazard, we are collecting data. We have already published an ANPR. We are putting together a medical advisory committee to examine the information and make recommendations on what size the test cylinder should be.

On butane lighters we are continuing to gather data. We have issued the ANPR. We will have to delay that for an additional year because we do not have the funding for the exposure survey.

In poison prevention packaging we are looking to revise the rulemaking to make the packages less accessible to children but easier for older people, for adults to use.

Senator **Bryan**. Can you give us any indication as to when you might complete the process and the rule itself promulgated?

Ms. **Graham**. On butane lighters?

Senator **Bryan**. Yes.

Ms. **Graham**. We are looking at, I believe, 1992 on butane lighters; on the choking hazards, I believe 1991; and on poison packaging I believe that either late 1989 or early 1990.

Senator **Bryan**. Thank you very much.

Senator Gorton?

Senator **Gorton**. Both of you heard the previous panel speak about the standards with respect to bicycle safety helmets, particularly with respect to children. Can you respond to their concerns and tell us whether or not anything is in progress with respect to that?

Ms. **Graham**. Senator, we are working on a voluntary standard that we started working on about 1987. This is the only activity that we have left vis-a-vis bicycles. Because of our funding reductions we have had to eliminate every other project, but we are working on a voluntary standard.

Senator **Gorton**. It did not appear as one of your priorities when you had your hearings to determine what to do this year?

Ms. **Graham**. No. It did not, and I do not believe we had any testimony on it.

Ms. **Dawson**. I would like to add to that. I believe there was some interest in bicycles and, of course, we have had a continuing interest in this issue because there are a lot of deaths and injuries, associated with bicyles.

The problem that we face is, being the Consumer Product Safety Commission, we must focus on the products. Of course, many of the bicycle injuries that we have been able to analyze are not necessarily caused by the product. They are usually caused by traffic accidents. There are only about five percent—I believe that was the amount—that our statistical data show that are in any way related to a defect in the bicycle itself.

As far as the helmets are concerned, Commissioner Graham has already alluded to the fact that we are looking at the issue of whether or not both of the voluntary standards that are in effect, both an ANSI standard and a SNELL standard, are adequate, and that work is ongoing right now.

Senator **Gorton**. One of the elements in the draft bill that you have had submitted to you is a proposal to say that two members will constitute a quorum for purposes of doing business. On the other hand, for all practical purposes, because of the limitations that have been contained in the law, the President would not have been allowed over the last several years to appoint a five-member Commission in any event.

Do you think that the Commission could work more effectively and could use its resources more effectively if instead of two members being a quorum out of five we simply statutorily created a three-member Commission?

Ms. **Graham**. My inclination is to support that, Senator, for several reasons. First of all, I think the collegial body is very important. I think we need the debate on safety issues and we need the checks and balances that a collegial body provides.

But in the early 1980s both the staff and the budget were cut nearly in half, and I think rationally, given the reduction there, it makes sense to also reduce the number of Commissioners to three and save that money as well. It puts the whole Commission in balance.

Senator GORTON. What does a Commissioner cost?

Ms. GRAHAM. We estimate a Commissioner costs about $250,000.

Senator GORTON. Ms. Dawson?

Ms. DAWSON. I would concur in the view she expressed. I think if we had no fiscal restraints whatsoever it would be nice to have five again, because when I first came to the Commission, we had five members and it is useful to hear the exchange of views and many times we do learn from one another.

But with the realities of the Federal deficit I think it is unrealistic to expect to go back to five members. So, making the best of the situation, three is a reasonable amount, and it does preserve our independence as a collegial body. And I think that is an important consideration.

Senator GORTON. Both of you have commented on that point, and today I saw in one of the newsletters an article concerning a question which occurred to me quite independently last week, and I want you to comment on it specifically.

Why a collegial body? Why not an administration with one administrator? It seems to me that while it may not be your twin, the National Highway Traffic Safety Administration is at least a first cousin with respect to the kind of work that it does. Do you think that its work is inhibited or hurt by the fact that it is an administration rather than a commission?

What is the advantage of having three rather than one?

Ms. GRAHAM. I think with the Consumer Product Safety Commission, since we regulate over 15,000 products, it is important to have the diversity of knowledge and opinion and the debate on those issues. You might not have as much need for debate at transportation. I really do not know.

I would also say that I think, given the recent history of the Commission, it is very important that there is that debate, that one person does not just singlehandedly make the decisions.

Finally, I would say the other problem facing the Commission is that we are very small. We are not held accountable for some of our actions, and I think it is important to have the Commissioners holding each other accountable.

Ms. DAWSON. The debate has gone on as long as the Commission has been in existence as to whether or not we should be a single administrator agency or a collegial body. Everyone has various theories on it. I think basically the theory that a collegial system is preferable is still a good one. There, of course, have been problems and we do not deny that, but perhaps because we are collegial and we are more visible maybe our problems are better known than problems at other agencies. I think perhaps for the benefit of the consumer maybe that is a good thing.

The alternative of having a single administrator would work only if the agency were to be folded into another larger agency. I do not think the Commission should remain independent if it is going to have only a single person making the decisions.

Senator Gorton. One more question. My notes for this hearing indicated that you had some reservations about various elements of this draft. Chairman Bryan asked you about that. You did not answer specifically but said you might have some technical ones.

I would like to focus your attention on one proposal or group of proposals which is contained here. You have emphasized, Ms. Graham, that you already have hearings each year in order to determine your priorities. If changes are made in the law, by the authorization bill, which give outside groups a greater right of appeal from the way in which you deal with voluntary standards and, for that matter, with mandatory standards, how is that going to affect the Commission's priorities?

Will it be a disability if you are required to use your limited resources to defend determinations or hold hearings on determinations in response to demands that come as a matter of right from outsiders, as against the present situation in which such determinations are a matter of your own discretion.

Ms. Graham. I do not think it would have a negative impact on the Commission at all. We operate under the Sunshine Act, and I welcome any kind of input from the outside to use as a factor in making decisions.

Senator Gorton. So you do not have a concern over those provisions?

Ms. Graham. No, I do not.

Ms. Dawson. I think the possibility is there if we got an extremely large number of petitions, for example, that our resources may be diverted from some of our hazard work. There was a provision in the Act which was repealed eventually which had to do with petitions, and it was for the reason that it generated much more work than the Commission could handle.

Under the Administrative Procedures Act, any interested party still has that right to petition the Commission, and of course we do get many such petitions. So it is something which, although we could certainly work with it, could present problems.

Senator Gorton. Thank you, Mr. Chairman.

Senator Bryan. Thank you very much, acting Chairman Graham and Ms. Dawson. I am sure that some of our colleagues who were unable to join us today have some additional questions. I know that I do, and perhaps Senator Gorton does as well. May we ask you to respond in a timely fashion to those questions?

Ms. Graham. Certainly.

Ms. Dawson. I would be glad to.

[The following information was subsequently received for the record:]

QUESTIONS SUBMITTED BY SENATOR BRYAN TO THE COMMISSION

QUESTION: In past testimony before the Consumer Subcommittee, you urged that the quorum requirement be changed to permit fewer than three Commissioners to constitute a quorum.

o Are there instances where this has been a problem? If so, please be specific.

ANSWER: Should the Commission remain a three member body we believe a quorum change from three to two would strengthen the ability of the body to resolve matters on the agenda expeditiously. In the past if one Commissioner was absent, either because of illness or a decision not to attend a particular decisionmaking meeting, the other two Commissioners could not conduct business. We believe that a quorum change is vital to allow the Commission to conduct business and fulfill its mandate.

QUESTION: Can you provide the Subcommittee with information about your progress on two of the CPSC's 1989 priority projects -- indoor air quality and playground equipment?

ANSWER: Indoor Air Quality -- The Commission's overall Indoor Air Quality (IAQ) effort seeks to determine the exposure to indoor air pollutants from consumer products, to assess the associated health risks, and to develop strategies to reduce those exposures and risks.

The Commission began addressing Indoor Air Quality issues as early as 1978, and these efforts rose to priority status during the years of 1982 through 1984. This early work included understanding the health risks associated with formaldehyde from insulation and pressed wood products, carbon monoxide, nitrogen dioxide and other pollutants from unvented combustion appliances, and asbestos released from consumer products and present in homes. Investigations in these areas culminated in a ban of asbestos-containing patching and emberizing materials, and urea formaldehyde foam insulation (later overturned). In addition, voluntary standards efforts were begun to decrease emissions of formaldehyde from pressed wood products, remove asbestos from consumer products, and reduce nitrogen dioxide emissions from unvented appliances.

Since 1984, the Commission has continued to maintain an active role in addressing indoor air quality issues. It has specifically addressed asbestos, combustion sources, products associated with specific volatile organics such as formaldehyde in pressed wood products and methylene chloride in paint strippers, and biological pollutants released from products such as humidifiers and air conditioners.

As work continued it became apparent that in addition to investigating hazards and working with industry to improve product technology, it would be extremely valuable to provide information to the consumer on how to reduce their exposure to a variety of indoor air pollutants. In 1988, the staff cooperated with the Environmental Protection Agency (EPA) to develop a broad based, information booklet which highlights a wide variety of indoor pollutants. This booklet was a first step in informing consumers about indoor air quality issues.

In 1989, Congress added $400,000 to the Commission's budget for the indoor air quality priority project. The major aspects of the project are two-fold. One aspect encompasses developing information for use by consumers in addressing indoor air problems in the home. The other involves the pursuit of specific research goals. Information will be provided to consumers on asbestos abatement, biological pollutants, combustion sources, and specific organic chemicals in the home environment. Research will be pursued in order to complete investigations on the contributions of kerosene heaters and humidifiers to indoor air pollution and to begin to understand the contribution of carpeting to chemical sensitization and acute health effects. Staff will use the technical information developed during both the consumer guidance and the research aspects to identify hazards associated with pollution sources and collaborate with voluntary standards organizations to address these hazards. We have made the following progress to date:

o A cooperative agreement has been developed with the American Lung Association (ALA) to coordinate two workshops addressing biological pollutants and asbestos abatement procedures in the home. The workshops will provide the forum for technical experts to discuss specific strategies that could be implemented by the public to reduce or eliminate their exposure to biological pollutants and asbestos in the home. As part of the agreement with the ALA, consumer information documents will be developed based upon these discussions and other available information. The workshops are scheduled in July with the consumer guidance documents available later in the year.

o A Safety Alert on biological pollutants associated with humidifiers was issued in December 1988. The information contained in the alert was based upon research conducted at Oak Ridge National Laboratories under a contract initiated in 1986. A news video was to be produced on "Humidifier Safety" to reinforce the message communicated in the humidifier "Safety Alert". The video was broadcast by satellite on February 3, 1989, and reached 8,034,000 TV households.

o A test plan has been developed and peer reviewed to investigate the contribution of kerosene heaters to levels of particulates, acid aerosols, nitrogen dioxide and other pollutants to indoor air. This plan includes the continuation of work to determine the correlation between chamber/hood emissions measurements as part of the voluntary standard activity to develop an NO_2 emission standard for kerosene heaters. The investigation of acid aerosol emissions from kerosene heaters is also of interest to staff at the Environmental Protection Agency and test protocols are being coordinated.

- In support of the kerosene heater research, training has been completed on the scientific equipment needed for characterizing acid aerosol emissions, and the designs for the sampling system and remote control operation system for the kerosene heater research work have been completed. Chamber characterization and testing is underway. It is anticipated that a report on the preliminary results will be completed early in August.

- A rationale for an emission rate standard for kerosene heaters, as measured using a hood, is being developed for presentation to Underwriters' Laboratories (UL) early in September. A similar rationale for unvented gas space heater emissions will be provided to ANSI Z21 Committee around the same time. Meetings have been held with both groups and the outlook for a successful voluntary standard is good.

- In 1987, as part of the Six Cities Study, CPSC sponsored research by the University of Michigan and Harvard's School of Public Health, on levels of allergens and pathogens in homes and their association with health effects. Data from this research is being analyzed and results reviewed with the investigators. This research will be completed this year.

- Staff has begun to develop a database on consumer complaints associated with indoor air pollution, including emissions from carpeting. This will be a continuing effort throughout the year.

- Planning is underway for the development of an in-house small chamber testing facility to assess emissions from products including carpeting and air fresheners. Purchase orders for the scientific equipment are now being reviewed.

Playground Equipment -- In 1987, an estimated 198,000 injuries were attributed to playground equipment accidents. About 185,000 of these injuries (over 90%) involved children under the age of 15. About 84,000 of these injuries (over 40%) involved children under the age of six. From 1980 through 1987, there was an average of 13 deaths each year on playground equipment reported to CPSC.

The 1989 Priority Project on Playground Equipment includes the collection of injury data and analysis by several different technical disciplines, to develop sound recommendations for different types of playground equipment. We have made the following progress to date:

- An ASTM task group on public playground equipment held its initial meeting in May 1988. Individual working groups have been established to address different elements of the standard. The Commission is also active in voluntary standards groups working on home playground equipment and playground surfacing.
- Incident data for the project has been collected.
- A contractor is developing human factors criteria to determine the type and size of equipment best suited to each child's developmental level.
- A market study on playground equipment has been prepared.
- Information on foreign playground equipment standards has been collected.

The results of this research will be used in 1990 to update existing playground equipment handbooks, develop new handbooks for preschoolers, continue work with voluntary standards groups, and develop information and education programs.

QUESTION: In the draft legislation, there is a process for petitions regarding voluntary standards. This is intended to address the problem where a developing standard is inadequate or is developing too slowly. What are your comments on this provision?

ANSWER: The section in the draft legislation provides, essentially, that if there is a pending petition requesting the issuance of a regulation, interested persons are authorized to file a second petition requesting that the Commission review a voluntary standard applicable to the product in question. A grant of the petition would mean that the Commission would review the voluntary standard. A denial of the petition would mean that the Commission would decline to review the voluntary standard. When the petition is either granted or denied, that decision may be challenged in court.

Under present procedures, interested persons are authorized under the Administrative Procedure Act to file rulemaking petitions that request, among other things, that the Commission begin a proceeding to regulate a product alleged to present a risk of injury. The staff prepares a briefing package addressing such issues as an assessment of the risk of injury, the benefits and costs of the requested regulation, and whether the regulation may be necessary to address an unreasonable risk of injury. As part of this process, the staff also reviews and analyzes any applicable voluntary standards. If the Commission grants the petition, it will begin a proceeding, usually by publishing an Advance Notice of Proposed Rulemaking (ANPR), that, among other things, identifies the product and the nature of the risk of injury, summarizes regulatory alternatives (including voluntary standards), and provides information on any relevant existing standards known to the Commission, including "a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified..." (15 U.S.C. § 2058(a)).

If the Commission denies the petition, it will provide the petitioner a written statement of the reasons for denial. In the case where the Commission finds that there is a risk of injury associated with the product, but that it is not necessary to begin a rulemaking proceeding because of either an adequate existing voluntary standard that is substantially complied with, or an assurance that an adequate voluntary standard will be completed in a reasonable amount of time, the written statement to the petition will include a discussion of the reasons for the finding.

The denial of a petition described above is generally considered "final Agency action" and, as such, is subject to judicial review under the Administrative Procedure Act. Likewise, the issuance of a final rule after a petition has been granted, is also final Agency action subject to judicial review. In either event, however, the findings of the Commission with respect to the adequacy or inadequacy of a relevant voluntary standard are among the matters that can be reviewed by a court. Consequently, whether a petition for rulemaking is granted or denied, the Commission must make findings with respect to voluntary standards and these findings are ultimately subject to judicial review.

Based on the foregoing discussion, we believe that the Administrative Procedure Act already provides a mechanism for challenging a petition denial and that this provision of the draft legislation may be unnecessary.

QUESTION: Industry always knows that the CPSC has the right to begin a rulemaking or use its recall authority if the voluntary standards process breaks down. Some have stated that, since the CPSC has not begun many rulemakings in the past several years, this is not a true incentive for industry.

ANSWER (GRAHAM): While I am a strong proponent of voluntary standards and believe most industries cooperate with the Commission to market safe consumer products, the Commission needs to send a clear message that when voluntary standards are not achieved expeditiously, we will act to correct the problem. I believe my previous votes on such issues as the need for mandatory action on lawn darts and all terrain vehicles have sent a message to industry that I will not hesitate to actively assert the Commission's authority when reasonable safety precautions are not instituted. Recent action by a number of industries in the voluntary standards process indicate that industry has understood the message that the Commission will meet its statutory responsibility in ensuring safer consumer products.

ANSWER (DAWSON): The question of whether or not the Agency issues enough mandatory rules has frequently been raised in the past, even in periods when the Agency was especially active in the rulemaking field. Since 1981, when Congress mandated the Agency to defer to voluntary standards under certain conditions, there have, of course, been fewer attempts to issue Federal rules. However, CPSC has continued to issue Advance Notice of Proposed Rulemakings (ANPR) when warranted. For example, there are currently rulemaking proceedings related to cigarette lighters and choking hazards associated with items with small parts intended for children under three.

Although it is still but one incentive among many, CPSC's authority to initiate mandatory rulemaking or issue recalls continues to be effective in prodding industries to move more quickly in the development of needed voluntary standards.

A recent experience with the bunk bed industry, I believe, demonstrates this point. The Commission received a petition requesting the issuance of a mandatory rule to address certain hazard patterns associated with bunk bed use by young children. While the Commission voted to deny the petition, it concurrently voted to request that the furniture industry take further specific steps to improve the safety of bunk beds.

Those actions included: 1) reconsideration by industry of some additional CPSC staff recommendations for inclusion in the industry's Revised Bunk Bed Guidelines; 2) submission of those Guidelines to a voluntary standards organization for approval as a consensus standard; and 3) the development and implementation of a reliable third party certification program to assure compliance.

The industry agreed to all three of these recommendations. CPSC work has resulted, with the full cooperation of the industry, in far-reaching measures to address the hazards of mattress support collapse, entrapment and falls from bunk beds.

Other safety hazards such as those associated with audio-visual carts, diapers and swimming pool and spa covers were successfully addressed recently without resorting to rulemaking. Our experience with industry, although not perfect, has been positive overall.

QUESTION: The draft bill makes changes in the defect notification provision (§ 15(b)) of the Consumer Product Safety Act (CPSA).

What is your opinion of the requirement that violation of a voluntary standard should also be reported.

What do you think of requiring a manufacturer to notify the CPSC if it is sued for serious injury or death?

ANSWER (GRAHAM): The Commission staff supports the language in the draft bill which requires firms to report a failure to comply with a voluntary consumer product safety standard upon which the Commission has relied under Section 9. Staff believes this language is consistent with the statutory requirement that the Commission terminate any rulemaking proceeding if it determines that compliance with a voluntary standard is likely to result in the elimination or the adequate reduction of an unreasonable risk of injury and it is likely that there will be substantial conformance with the voluntary standard.

In those situations when the Commission relies on a voluntary standard and foregoes issuance of a mandatory standard, it is important that the Commission be aware of the extent to which firms are complying with the voluntary standard. An efficient way for the Commission to obtain this information is by firms reporting to the Commission. This information allows the Commission to monitor whether there continues to be substantial conformance with a voluntary standard and could greatly assist the Commission in identifying potentially hazardous products.

The Commission staff supports the requirement that manufacturers notify the Commission if they are named in product liability cases involving serious injury or death. The Commission receives only a small number of reports each year despite the fact that there are significant numbers of deaths and injuries associated with consumer products. While many lawsuits are not filed until long after an injury or death occurs, reports of serious injury or death should greatly assist the Commission in learning about potentially hazardous products.

ANSWER (DAWSON): Currently, manufacturers, distributors and retailers must report a product which fails to comply with a consumer product safety rule or contains a defect creating a substantial product hazard. This provision has worked well in obtaining useful information regarding potential safety problems.

The proposed changes would certainly increase the number of incidents required to be reported. The Agency staff, already working to capacity, could conceivably be overwhelmed by thousands of such reports. While this requirement would increase the number of reports it would not necessarily raise the number of product hazards requiring Commission action.

As I understand the proposed legislation, it would require manufacturers to report a violation of a voluntary standard if the standard is one on which the Commission has relied after issuing an ANPR. The Committee should keep in mind that when the Commission does defer in such cases, it is our practice to provide for follow-up monitoring of compliance with such a standard. Our staff routinely notifies firms who are out of compliance with such a voluntary standard.

In addition, the Commission has been very active in disseminating the reporting requirements of Section 15 to manufacturers, retailers and distributors. We have produced Section 15 reporting guidelines which have been widely distributed. Section 15 was selected by the Commission as a priority in 1990. These and other Commission efforts should result in better Section 15 reporting.

QUESTION: Regarding civil penalties imposed by the CPSC:

Please provide information on the number imposed by the CPSC during the past year. How much was recovered?

Do you support the provision in the draft bill increasing the amount of civil penalties to account for the effect on inflation since they were enacted?

ANSWER: In calendar year 1988, the Commission provisionally accepted and negotiated by the staff a total of $1,015,000 in civil penalties from six companies. Thus far in calendar year 1989, the Commission has two civil penalty matters pending.

The Commission supports the provision in the draft bill increasing the amount of civil penalties. Since the original Consumer Product Safety Act was passed in 1973, doubling the maximum civil penalty would not be unreasonable considering inflation. If the penalty amount is raised the Commission would still have to take into account the criteria set forth in § 20(b) of the CPSA such as the severity of the risk and the size of the company, in deciding the size of the penalty. Further, if contested, a Federal court judge would ultimately decide the amount.

QUESTION: Do you support the provision in the draft bill establishing civil penalties under the Federal Hazardous Substances Act Why or why not?

ANSWER: We strongly support the insertion of a civil penalty provision into the Federal Hazardous Substance Act (FHSA) -- its absence has been a longstanding enforcement gap. While the Commission and Department of Justice often obtain injunctions and seizures following violations, civil penalties would provide an important deterrent effect. Criminal cases are rarely pursued under the FHSA.

The Commission has extremely active enforcement programs for fireworks and small parts in toys, two regulations issued under the FHSA. With an FHSA civil penalty provision in place, the Commission could seek penalties for the manufacture, importation, distribution, or sale of violative fireworks or toys. We would expect such authority to improve compliance with the Commission's safety regulations by deterring violations.

An increase in the civil penalty amounts, both in the Consumer Product Safety Act (CPSA) and in any FHSA provision enacted, would likely add to the deterrent effect.

QUESTION: You have stated that the CPSC works with industry on a number of matters (e.g., playground equipment and bunk bed voluntary standards, and product safety assurance programs).

Some have complained recently that business no longer fears the CPSC taking any action, and so is dragging its feet in taking many corrective actions.

- o Is that your experience?
- o If not, in what areas has the CPSC been most effective in getting cooperation from industry? Least effective?

ANSWER (GRAHAM): I believe the Commission needs to strengthen its message to industry regarding the use of voluntary standards. Steps are being taken to communicate the Commission's concern with respect to the need to expedite the voluntary standards process especially when the products of concern affect the most vulnerable segments of our population, such as children and the elderly. The Commission staff is being asked to more closely monitor the voluntary standards process and to report delays in the process to the Commission so that available options can be studied. It is my belief that we can continue to work with industry voluntarily, but if indeed further Commission action is necessary, expeditious and decisive steps should be taken to ensure consumer safety.

ANSWER (DAWSON): I firmly believe that CPSC's overall record in achieving greater safety benefits for the consumer is a good one.

The most notable exception to this positive record was our experience with the ATV industry. In that case, after an unconscionable delay, the Commission brought a Section 12 imminent hazard action against the industry. That action subsequently resulted in a consent agreement which Judge Gerhard Gesell wrote was the most comprehensive agreement in consumer product safety history: "No decree designed to protect consumers has ever gone this far in meeting such a massive national consumer problem."

Moreover, our experience has been positive with regard to cooperative efforts on swimming pool and spa cover safety, chain saws, liquid propane gas valves, methylene chloride labeling and others, resulting in improved safety for the American consumer.

Pool and spa covers can be used as a good example. The Commission, extremely concerned about the risk of drowning to young children associated with the use of covers for pools, spas and hot tubs, independently requested the assistance of the American Society of Testing and Materials (ASTM) task group on covers to ensure that an effective standard for covers be developed as quickly as possible. A letter from the Commission was sent to the ASTM F15.29 Committee Chairman (a pool industry representative) making the request, with the understanding that as an alternative the Commission would initiate rulemaking proceedings. The letter from the Commission resulted in a prompt response from the ASTM Committee assuring the development of a voluntary standard under the emergency procedures of ASTM. Under rarely used emergency procedures, the objective was to develop the standard within a one-year period. This goal was realized, and the standard, which includes performance specifications for pool covers, spas and hot tubs and labeling requirements for all covers, was just approved on April 4, 1989.

Staff is currently involved in the monitoring or development of approximately 50 voluntary standards. On a regular basis, staff formally reviews and assesses the level of cooperation from industry on such standards. Staff has indicated in its current review that only about ten percent of the voluntary standards now being monitored are not progressing satisfactorily. Once apprised of the situation by the staff, the Commission considers what steps to take to address the problem. Rulemaking or Section 15 complaints are never excluded as possible courses of action. The fact that 90 percent of these standards in which the Commission is involved are progressing satisfactorily seems a better barometer for evaluating our experiences with cooperative industries. But as is the case with any regulatory Agency, the Commission cannot afford at any step of the way to appear to be complacent or lax in working to reduce risks to consumers.

QUESTION: What is your opinion of the limitation on cost-benefit analysis contained in the draft bill?

ANSWER: Section 9 of the draft bill amends Sections 12 and 15 of the CPSA and Section 15 of the FHSA. The additions of Sections 12(f) and 15(h)(1) to the CPSA and 15(g)9(1) to the FHSA provide that nothing in those sections shall be construed as requiring a cost-benefit analysis. We support these sections.

However, the additions of Sections 12(f)(2) and 15(h)(2) to the CPSA and 15(g)(2) to the FHSA might present a problem. These sections provide that where a manufacturer has voluntarily indicated its intention to take action under those sections, the Commission may not conduct a cost-benefit analysis. The potential problem is that if the Commission wants to reject a corrective action as inadequate, the firm might use this provision to argue that the Commission has no authority to do so -- because any rejection involves cost-benefit considerations. Based on such an argument, a firm could assert that the Commission must accept the inadequate corrective action.

QUESTION: In the past, there has been some discussion as to whether the Chairman has full authority over personnel at the CPSC, or shares this responsibility with the other Commissioners. A provision is included in the draft legislation which requires that bureau heads be appointed and removed by the Chairman, subject to the other members' approval.

o Is this a good idea? Why or why not?

ANSWER: It is important that the staff be held accountable to all Commissioners and not only the Chairman. This is especially important because of the collegial body format in which the Commission functions. Providing that a majority of the Commissioners could appoint and remove senior staff would further ensure that the staff serves all Commissioners equally. In terms of identifying such positions we believe it should be done by position level rather than specific title.

QUESTION: Do you support the statutory imposition of a personnel floor, to make sure that the CPSC staff does not get reduced below a particular number?

ANSWER: The Commission supports the intent of such a provision, as the number of staff is approaching critically low levels, but believes that funding considerations make it impractical. The Commission must be able to adapt to budget reductions in the most effective manner possible, including staffing reductions if necessary. We have responded to appropriations reductions, pay raise absorptions, and a sequester with reduction plans which consider both FTE and non-salary costs. It would be unduly constraining to be required to maintain staff at statutory levels while focusing all reductions on the 27 percent of our budget which is contracts, computer costs, overhead expenditures, and other non-salary items. Our programs are most successful when an appropriate mix of in-house and contract-supported functions is maintained.

QUESTION: An analysis of votes by the CPSC in 1988, shows that the members voted unanimously in 79 percent of the cases, and that most of the dissents related to the issues of Lawn Darts and All Terrain Vehicles (ATVs).

- Does this suggest that, with regard to most issues, the CPSC members are in accord? If so, why is there a general perception that the members have been so divided?

ANSWER: We believe that the Commissioners for the most part are in accord and work closely together. In the past there have been difficulties because of differing approaches as to the mission and management of the Commission.

QUESTIONS BY SENATOR GORTON FOR ACTING CHAIRMAN GRAHAM

QUESTION: The Commission's 1990 budget request to OMB was $36.5 million. That amount was reduced to $33.5 million in the final budget. Please describe the programs or projects for which funding will be reduced or eliminated in order to meet the final budget figure.

ANSWER: Our January request is $3.0 million and eight FTEs less than the one proposed by the Commission last September. It is $1.0 million less than our 1989 appropriation, and thus does not provide for any pay raises or inflationary cost increases we experience from year to year. The $3.0 million reduction was accommodated by reducing support for programs in all Commission areas, as well as cutting staff and support costs. Eight projects were dropped from our 1990 plans.

The OMB mark eliminated all hazard contract support ($1.2 million), severely impacting technical studies on ten projects and delaying their completion. Included among these were contract funds and two Compliance FTEs supporting the four priority projects selected earlier by the Commission. They include Swimming and Diving, Cigarette Lighters, Playground Equipment, and Section 15.

Contracts which were eliminated in areas other than hazard work include all State/local contracts to assist in providing consumer information, most of the contract funds planned to monitor compliance with the ATV consent decrees, and funds to print and distribute consumer information material. Selected injury data enhancements recommended by an in-house review team were also eliminated ($262,000 in contract funds, 2.5 FTEs). They include increasing the NEISS hospital sample by 27 hospitals, establishing data coordinators in some hospitals, and collecting data on childhood poisonings and environmental health problems.

QUESTION: According to the Commission's 1990 budget request, "Due to contract funding, (the priority projects) may not be considered fully funded consistent with fiscal 1984 Senate Report language...." How will the reduced contract funding affect the priority projects?

ANSWER: All four priority projects have been affected by the contract reduction. The Swimming/Diving project will not have contract funding to purchase data on injuries regarding diving dynamics; evaluate the relationships of pool configuration to injuries; develop a model to calculate proper pool configurations; and develop a video news release on pool/diving safety.

In the Cigarette Lighter project, we will not be able to conduct an exposure survey on lighters and matches, which will delay rulemaking; evaluate prototype child-resistant cigarette lighter's design to establish acceptance criteria for standards; conduct panel studies on consumer acceptance of child-resistant lighters; and develop public safety announcements, brochures, posters and bumper stickers providing safety warnings.

The Playground Equipment project will not have contract funds to design and develop playground equipment handbooks into camera ready copy. Also eliminated were contracts to expand the national network of State and local contacts to recommend adoption of handbooks as model codes within State and local jurisdictions, provide surveillance of playground equipment, and identify hazardous equipment for follow-up action.

The Section 15 contracts would have provided funds to identify additional sources of new Section 15 cases. The contracts would support networking with Federal and State courts, medical emergency personnel, consumer affairs offices, bar associations, and similar organizations.

QUESTION: Do you anticipate changes in the CPSC's field office structure and staffing if the 1990 budget proposal is adopted?

ANSWER: We do not anticipate any changes in the Field office structure for 1990. The Field reorganization implemented in 1987 is nearly complete, and only five vacancies remain to be filled.

QUESTION: Approximately how many rulemaking petitions does the Commission receive each year, and what is the average cost to deal with each petition?

ANSWER: The number of petitions which the Commission has received has varied from year to year as shown by the following:

FY 1986	2 petitions received
FY 1987	9 petitions received
FY 1988	2 petitions received
FY 1989	4 petitions received as of March 27, 1989.

The average cost to address a petition varies so widely that it is not possible to develop a meaningful average. In 1987, we spent $39,000 on petitions and completed only one petition; in 1988, we spent $90,960 and completed work on 10 petitions. The 1990 budget projects completion of three petitions with an expenditure of $67,000 during that year. These figures cannot be translated directly into an average "per petition" cost because in many cases significant work is done on petitions in years prior to those in which they are completed.

There is a great variance in the amount of staff time and resources necessary to address each petition, which in large part depends on whether we already have the necessary data to respond and whether we are already familiar with the issues involved.

QUESTION: How many rulemaking petitions are currently outstanding? Please provide specific information. How many of these petitions concern products for which voluntary safety standards exist or are in the process of development?

ANSWER: The Commission currently has six petitions pending. As indicated by the following narrative, there are voluntary standards applicable to most of the products subject to these petitions.

1. Saunas: This petition calls for a mandatory standard to include warning signs, timing and temperature controls, ventilation and alarm signals to address potential hazards such as heat stroke or hypothermia, cardiac arrythmia and cardiac arrest, myocardial infarction, syncope or fainting. There is a voluntary standard addressing this product, and the staff is currently determining to what degree, if any, it addresses the potential hazards cited by the petitioner.

2. Crib Toys: This petition calls for mandatory requirements for crib toys to address potential strangulation hazards to young children from crib toys, especially those which are intended to be hung from or otherwise attached to a crib. These products are covered by existing requirements, developed earlier with CPSC assistance, in the overall Toy Safety Voluntary Standard. The adequacy of these existing voluntary requirements will be one of the issues which the Commission will consider when it makes a decision on this petition.

3. Hair Dryers: This petition calls for mandatory requirements to prevent electrocution from accidental immersion of hairdryers in water when the switch is in the "on" position. There is an existing voluntary standard, developed earlier with Commission assistance, that provides protection with the switch in the "off" position. The Commission is currently in contact with the industry and the voluntary standards organizations to discuss upgrading this standard to provide electrocution protection when the switch is in the "on" position. In making a decision on this petition, the Commission will consider both the adequacy and the timing of these improvements.

4. Heat Tapes: This petition requests the issuance of a consumer product safety standard addressing injuries from both fires and electric shock hazards associated with heat tapes, whose function is to prevent pipes from freezing. There is an existing voluntary standard. When making a decision on this petition, the Commission will consider the adequacy of this standard.

5. Adhesive Removers Containing Acetonitrile; Hair Care Products Containing Sodium Bromate: This petition calls for requirements for child-resistant packaging for these products to be issued under the Poison Prevention Packaging Act. We know of no voluntary standards dealing with the risk of ingestion of these products.

6. Structural Foam Plastics Used in Home Furnishings: This petition calls for requirements related to the flammability of products made with these materials. Although there are testing methods applicable to test the flammability of such products, we know of no voluntary standards in this area.

QUESTION: How long does it take the Commission to act on a rulemaking petition? Would it be reasonable to expect that the Commission could act on a petition within 120 days?

ANSWER: The time that it takes for the Commission to reach a decision on a petition depends on many factors: the complexity of the issues involved, whether or not the Commission had previous experience or knowledge of the issues, the severity of the injuries associated with the product, the priority of other activities which the staff is engaged in at the same time, and whether or not this is in an area where the Commission directs that priority attention be given.

Thus, there is a great variance in response times. Some petitions can be, and in fact are presently addressed within four months, but many take much longer. If mandated by law, the Commission could probably give some kind of answer to most petitions within 120 days. However, the answer may not be adequate being based upon hasty research, and in order to meet the 120 day deadline, the Commission would have to shift resources from other efforts. Thus, the Commission could lose control over its own priority setting.

QUESTION: Are conflicting Federal, State, or local standards preempted by deferral by the Commission to a voluntary standard?

ANSWER: Statutory preemption under the Consumer Product Safety Act (CPSA) is provided for under Section 26(a), which reads as follows:

> Whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer shall have any authority either subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard (Emphasis added.) 15 U.S.C. § 2075(a).

Thus, resolution of the issue raised depends upon whether a voluntary standard "deferred to" by the Commission is a "consumer product safety standard."

The term, "consumer product safety standard," is not defined in the CPSA. Section 3(a)(3) of the CPSA (15 U.S.C. § 2052(a)(3)), however, defines a "consumer product safety rule" as "a consumer product safety standard described in Section 7(a), or a rule under this Act declaring a consumer product a banned hazardous product." Section 7(a) (15 U.S.C. § 2056(a)) refers to consumer product safety standards as those promulgated "in accordance with the provisions of section 9...." It would, therefore, appear that the "consumer product safety standard" referred to in Section 26 as being preemptive, means a mandatory standard promulgated under Section 9.

The Office of the General Counsel believes the most reasonable statutory interpretation is that only a mandatory consumer product safety standard preempts under Section 26. Nevertheless, it must be pointed out that the Commission has not taken a formal position on this and we are unaware of any court decision (the courts would be the final adjudicator of this issue in any event) resolving this issue with any certainty.

QUESTION: What concerns, if any, would you have if a 12 or 18 month deadline were imposed on CPSC promulgation of product safety rules?

ANSWER: Section 9 of the CPSA (15 U.S.C. § 2058), sets forth extremely detailed procedures and substantive findings for the issuance of rules. Except in the simplest of matters, to make these findings usually requires many months of complex scientific and economic work, often requiring the expertise of outside contractors. We are concerned that an absolute deadline from publication of the Advance Notice of Proposed Rulemaking (ANPR) to publication of a final rule (or even a proposed rule, for that matter) would have at least two adverse implications. First, it would stifle the issuance of ANPRs. Knowing of the deadline, the Commission would not be able to issue an ANPR unless it was certain it could meet it. This might mean holding off on the issuance of ANPRs until substantially all of the work necessary to complete a proposal was completed. Second, an absolute deadline, without the opportunity for the Commission to extend it for good cause, could mean that if the rule were not ready to be proposed or issued at the end of the period, it could not be issued at all or that the Commission would have to start the rulemaking process over again, resulting in additional delay.

QUESTION: For how many voluntary standards is the Commission currently participating in development or monitoring development? What is the total number of such standards in which the Commission has participated or monitored?

ANSWER: The Commission is currently participating in the development of 20 voluntary standards and monitoring development of 29 voluntary standards. Since the Commission was established, its staff has monitored or participated in the development of approximately 150 new or revised voluntary safety standards.

QUESTION: How many times has the CPSC imposed an order under Section 15 without first agreeing on a voluntary settlement or action plan with the manufacturer?

ANSWER: The Commission pursues all avenues of voluntary settlement before proceeding to administrative litigation to have an order imposed on a manufacturer. Only if the Commission is unable to obtain a voluntary settlement does it resort to litigation to seek an order under Section 15 of the CPSA. If a voluntary settlement is obtained there would be no practical reason to pursue mandatory action through Section 15.

Since the Commission began operations in May 1973, it has issued approximately 21 administrative complaints under Section 15 of the CPSA seeking an order requiring public notice and other remedial action. In approximately 19 of those cases, the matters were settled before a final decision was reached, and the firm and Commission agreed to a remedial action. One case was adjudicated and the Presiding Officer found that the product involved did not present a substantial product hazard. Recently, an Administrative Law Judge issued an initial decision in another adjudicated matter, finding that the product did present a substantial product hazard.

QUESTION: How many Section 15 notifications did the CPSC receive in each of the last two years? Please indicate how many of these resulted in recalls and how many of the resulting recalls were ranked as Class A hazards, Class B hazards and Class C hazards.

ANSWER: The following table reflects the number of Section 15 reports received by the Commission over the past two years and the corresponding number of corrective action plans (CAPs) by hazard category:

		FY 1987	FY 1988
Total Reports		165	138
CAP's	A	0	0
	B	18	14
	C	31	24
	D	11	23

Many reports not included in the above tabulation are received on products which fail to comply with some aspect of a regulation currently being enforced by the CPSC. They are received and then pursued by the appropriate regional office staff, as would be any violation of a regulation. Whether a prospective or retrospective CAP would be undertaken would be dependent on the severity of the risk associated with the violative product.

Finally, as a general rule, most Class A hazard CAP's are the result of staff-initiated investigations rather than as a result of a Section 15 report. The hazard priority and corrective action guidelines are discussed in a recently published recall handbook.

QUESTION: To what extent do you believe the Commission should prepare and consider economic analyses in association with Section 15 cases?:

ANSWER: In considering action under Section 15 of the CPSA, it is appropriate to take into account potential economic consequences of the action being considered. Thus, it is appropriate when considering action under Section 15 to consider the severity of injury involved, the vulnerability of the population affected, and the resources of a company to take remedial action. In addition, it may be appropriate to consider a firms direct costs in conducting a remedial action, the company's financial ability to take a remedial action, the possible economic consequences of the remedial action, and the anticipated effectiveness of the remedial action.

I believe formal cost-benefit analyses is generally unsuited to compliance activities. Compliance decisionmaking often includes consideration of variables such as deterrent effect, precedential value, public concern, and other factors that are difficult, if not impossible, to quantify accurately. In addition, product recalls are usually voluntary. Injecting cost-benefit analysis formally into compliance decisions could lead to delays and could encourage firms to fashion arguments for limited voluntary action based solely on a monetary balance.

The criteria for what constitutes a substantial product hazard under Section 15 is specifically set forth in Section 15(a) of the CPSA and those are the primary criteria that should be considered.

QUESTION: Some critics of the Commission suggest that it has in some instances deferred all efforts related to the development of a mandatory rule upon only the promise or expection that an industry group will develop a voluntary standard. To what extent do you believe this criticism is valid?

ANSWER: I am a proponent of voluntary standards. I believe that the vast majority of industry is willing to work together with the Commission to ensure that consumer products are safe. In order for the voluntary standards process to work, the Commission must have some reliance on industry's expectations to meet certain milestones to develop a voluntary standard. The Commission, however, must ensure that these milestones are met and that any delays are brought to the Commission's attention immediately so that options related to the reliance on that voluntary standard can be discussed. If the Commission works with industry and makes it clear that we will closely monitor the voluntary standards process to ensure a smooth and expeditious process, realistic milestones will be established and met.

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QUESTIONS FROM SENATOR GORTON AND
COMMISSIONER DAWSON'S RESPONSES

1. Question: Would it be reasonable to expect that the Commission could act on a rulemaking petition within 120 days?

Answer: My response addresses what I believe to be the inquiry's concern regarding both the time it takes the Commission to act on a petition for rulemaking as well as a proposal which would require the Commission to respond to a petition to review reliance on a voluntary standard within 120 days.

In either case, such time limits might give rise to practical concerns regarding the potential impact on the Commission's safety agenda, the quality of decision-making, and resources.

The Commission receives a variety of petitions each year ranging from relatively routine matters where research from previous petitions expedites the proceedings (such as exemptions from the Poison Prevention Packaging Act), to more complex issues such as a request to ban a product based on the presence of a material alleged to be a human carcinogen. The proposed time limit might be met in simple, routine matters, but would be impractical in complex regulatory matters.

Consequences of such a time limit might include circumstances in which the Commission is forced to deny a potentially worthy petition because it lacked sufficient data at the end of the time period.

Another consideration is the likelihood that already scarce resources would be diverted to processing petitions with little safety benefit to the American consumer. Those areas in which hazards have been identified and where work will produce real benefits to the American consumer might suffer as a consequence. The desired goal--expedited process of petitions, might be achieved but at the cost of reasonable, well-considered agency action.

In the matter of the proposal relating to petitions for review of a voluntary standard, I believe current APA procedures already permit such petitions. More importantly, staff procedures already include review of all voluntary standards during consideration of any safety hazard. Thus, such a provision seems unnecessary.

While I understand and appreciate the rationale behind any proposed time limits, I feel there are other means available which would have a greater effect on speeding critical agency activities. These include improved management of staff resources by the top leadership of the Commission and better tracking of standards related issues. Oversight by our congressional committees is also an excellent motivation for the Commission and its staff to proceed quickly. While there are arguably cases where the agency waited too long in expectation that an industry would respond to safety problems, those occasions, I believe, are the exception rather than the rule. It is a fact that standards-setting, whether by the federal government or by private industry working with the federal government on a voluntary basis, is time consuming and in many cases cannot be expedited without a significant loss of quality. Of course

I believe all these matters deserve the Commission's close attention. Certainly, better internal processes must be developed to ensure that critical safety measures are not unnecessarily delayed.

2. Question: Are conflicting federal, state or local standards preempted by deferral by the Commission to a voluntary standard?

Answer: The issue of whether deferral by the Commission to a voluntary standard preempts conflicting state and local laws has been the source of some controversy. Based on my reading of the present statute, I believe that such deferral does not preempt conflicting federal, state or local laws. As a July 31, 1986 letter from Congressman Henry Waxman, to former Chairman Terrence Scanlon pointed out, Congress considered and rejected an amendment specifically providing for preemption for voluntary standards during the 1981 reauthorization process.

If, however, such deferral to voluntary standards were found by the courts to have preemptive effect, a number of practical concerns would be raised. If such standards were to preempt conflicting laws, should authority to enforce those standards in the same manner it enforces mandatory standards be given to the CPSC? Many voluntary standards are design-oriented rather than performance-oriented. Would such preemption put the federal government in the position of enforcing what are potentially anti-competitive, design-oriented standards? When voluntary standards need updating, what role would the federal government play and what due process rights would be entailed? I believe current CPSC practices involving voluntary standards work. Greatly increasing the federal government's role in voluntary standards procedures could reach the point where it becomes intrusive in what is, after all, a private sector function.

Under current law, there have been occasions when an industry, which has worked diligently to help develop an adequate voluntary standard, has later found itself in the position of having to deal with conflicting state laws. If the industry failed to persuade the state to adopt its voluntary standard, and the state insisted on a more strict standard, the industry could be economically harmed by the extra costs of complying with differing safety standards. However, the only realistic alternative, in my view, would be for the Commission to have authority to develop a mandatory rule in such cases provided it found that such action was in the public interest. Under the current statute, such rulemaking is prohibited if the Commission has found that a voluntary standard already in effect is adequate and enjoys substantial compliance.

Other complications affecting preemption occur even when a mandatory rule is in effect. Under the current statute, states and local jurisdictions may apply to the Commission for exemption from preemption. For example, when the Commission promulgated a mandatory rule governing unvented gas space heaters, approximately forty-seven petitions were filed requesting an exemption from preemption on the basis that more stringent regulations on the local level were needed.

Currently, in instances where voluntary standards have been developed which adequately address safety hazards, industries do have some legal protection from conflicting laws. There are constitutional protections against state and local laws which unduly interfere with interstate commerce. Ultimately, however, good voluntary standards are the best argument against such state and local laws.

3. Question: What concerns, if any, would you have if a 12 or 18 month deadline were imposed on CPSC promulgation of product safety rules?

Answer: My concern about a 12 or 18 month deadline on the promulgation of safety rules is similar to my concerns on the proposed deadline on processing petitions.

In order for the Commission to issue a rule, it must abide by numerous statutory provisions. These provisions correctly prescribe the notice and comment periods, the findings that are needed and the kind of rules permitted. The Commission, in other words, must prepare its case for a safety standard by demonstrating the safety hazard and the need for a particular rule. In many cases, the collection of useful data takes nearly as long as the proposed deadline anticipates. Such a deadline might jeopardize the quality of rules promulgated, making them vulnerable to legal challenge.

The Commission's authority to promulgate rules ranges from those requiring warning labels to those establishing performance standards for complex machinery. Our jurisdiction is wide and diverse and makes our task of rulemaking rather unique among federal entities. The subject matter CPSC regulates is very dynamic. Consumer products change rapidly in design and performance. It is not uncommon for the design of a particular product to undergo technical change while the Commission pursues its first stage activities of hazard analysis and data collection.

One lesson learned early at the CPSC is that the market is dynamic and not very amenable to a bureaucratic mechanism which carries with it necessary due process guarantees. In short, deadlines will speed up the process, but not enhance consumer safety.

An example is the work done by the Commission with regard to chain saw kickback. It took approximately seven years for a government-industry cooperative effort to achieve a breakthrough in reducing the risk from chain saw kickback. Imposing a time limit in such a case would have been counterproductive.

On the other hand, there is no excuse for protracted delays of rulemaking or voluntary standard-setting when such technical barriers do not exist. I believe that improved management techniques and better identification of potential roadblocks is a better way to speed the process. In every case, Commissioners must decide whether a particular project deserves great priority and emphasis, based on their evaluation of injury data while weighing the agency's resources.

4. Question: To what extent do you believe the Commission should prepare and consider economic analyses in connection with Section 15 actions?

Answer: Clearly the Commission's Section 15 actions responding to substantial product hazards have economic consequences. Economic considerations, albeit less formal, are a part of every Section 15 action. The Commission's compliance staff estimates that it will conduct 310 investigations and initiate 125 corrective action plans with regard to Section 15 matters during fiscal year 1989.

I do not believe a formal economic analysis is necessary or desirable for most Section 15 cases. However, I believe the Commission needs the flexibility to utilize economic analysis in more complex matters where the course of action may not be readily apparent. Sound economic analysis sometimes supports taking a more vigorous approach to correcting a product hazard. The Commission needs the flexibility to conduct economic analysis when circumstances warrant.

5. Question: Some critics of the Commission suggest that it has in some instances deferred all efforts related to the development of a mandatory rule upon only the promise or expectation that an industry group will develop a voluntary standard. To what extent do you believe this criticism is valid?

Answer: When the Commission considers a product hazard, staff usually provides information relating to the question of whether the specific industry will address the issue itself. There may have been times when the Commission, expecting swift industry response, was disappointed. I believe that the ATV matter, for example, should have been handled more expeditiously by industry. Even though an ANPR had been issued, in 1985, it took court action to produce a response by that industry.

One the other hand, there are times when an appropriate response by a voluntary standards organization or by the industry itself addresses the risk very quickly and further Commission activity is unjustified. It is not always possible to predict which type of situation exists when dealing with the hazard in the preliminary stages.

Some of the criticism might be based on a misunderstanding of what the Commission does when determining whether to proceed with the rulemaking process. In looking at a safety hazard, the Commission takes into account a variety of circumstances, such as the severity of the hazard, current voluntary standards organizations' work, the developing technology, market trends and trends in hazard data. It may decide, based on all those considerations, that no safety benefit would be achieved in proceeding with mandatory rulemaking.

A factor sometimes overlooked is that the Commission by statute must issue its rules in terms of performance standards, not design standards. Most voluntary standards tend to be written in terms of design. It has been our experience that performance standards are more difficult to develop than design standards which may result in an appearance of delay. Consequently, the most expeditious route to achieving improved safety standards is still most often through the voluntary standards process. Since such standards are frequently design standards they can more easily be amended as circumstances warrant to keep up with rapidly changing technology.

I believe that in almost all cases where the Commission has deemed a product hazard serious enough to warrant project status, our efforts continue when a non-government standard is only a long-term possibility. In other cases, if a hazard does not warrant an intense effort, the staff will monitor the standard-setting procedures and keep the Commission informed of their progress. Program managers then make recommendations for specific Commission action in cases where the process is not moving quickly enough.

Senator **Bryan**. Thank you very much. We appreciate very much your testimony.

Our final panel this afternoon consists of Ms. Mary Ellen Fise, Product Safety Director of the Consumer Federation of America; Ms. Pamela Gilbert, who is consumer program director with the United States Public Interest Research Group; and Mr. Richard H. Gimer, an attorney with the law firm of Hopkins, Sutter, Hamel and Park, who is representing the United States Chamber of Commerce.

We will begin with Ms. Fise.

STATEMENT OF MARY ELLEN R. FISE, PRODUCT SAFETY DIRECTOR, CONSUMER FEDERATION OF AMERICA

Ms. **Fise**. Mr. Chairman and members of the subcommittee, I would like to thank you for the opportunity to appear here today to express the Consumer Federation of America's views on the CPSC and your draft reauthorization bill.

Before discussing the needed changes in CPSC law, I would like to express our appreciation to you, Mr. Chairman, and also to you, Senator Gorton, for questioning the Office of Management and Budget's proposed budget marks for CPSC. CFA believes that this subcommittee must also express its concern about the CPSC budget to your colleagues on the Appropriations Subcommittee on HUD-Independent Agencies. CPSC is desperately in need of more funding.

We also urge you to clearly indicate that the low authorization amounts contained in your draft reauthorization bill are minimal amounts rather than upper limits that would bind agency budget requests in future years.

CFA is pleased to offer its support for the draft legislation to reauthorize CPSC. We believe it will enable the agency to perform more effectively and efficiently. I would like to note that many of the CPSC reauthorization provisions supported by CFA are also endorsed by the Coalition for Consumer Health and Safety, a group of 13 consumer and health organizations and 13 insurance companies and associations.

Those provisions, many of which are endorsed, are in this document that has just recently been released called The Consumer Health and Safety Agenda. I would like to ask that that document be entered into the record today.

Senator **Bryan**. It will be done by reference.

Ms. **Fise**. I call the subcommittee's attention to the home and product safety chapter in that document and specifically to recommendations regarding CPSC.

Today I would like to very briefly discuss four provisions in the draft reauthorization bill. The first would be penalties. CFA believes that the penalty provisions in the draft bill need to be strengthened in two respects. Section 11 of the draft bill provides for the assessment of civil penalties for violations of the Federal Hazardous Substances Act, and CFA heartily supports this provision.

In fiscal year 1988 alone 148 toys and childrens products were found by CPSC to be in violation of mandatory standards. Yet for all of these violations the CPSC and our U.S. Treasury collected not one cent. Thus, we are happy to see a civil penalty provision for FHSA as part of your draft bill.

We believe, however, that legislation should not stop there. The Commission should also be given the right to assess civil penalties for violation of the Flammable Fabrics Act, the Poison Prevention Packaging Act, and the Refrigerator Safety Act.

In addition to adding these new penalty provisions, we believe that the penalty amounts currently contained in all five Acts, including the Consumer Product Safety Act, need to be adjusted for inflation. For example, the CPSA provides for the imposition of civil penalties of $2,000 per violation of the Act, with a maximum total penalty of $500,000. Due to inflation, these penalties are worth only 36 percent of their original value. CFA urges the adoption of a penalties provision that would adjust all the CPSC laws' penalties to automatically keep pace with inflation.

The second area I would like to address is increasing reporting of unsafe products. One means in which CPSC is able to learn about unsafe consumer products is through manufacturer reports to the Commission that a product fails to comply with an existing standard or ban or may contain a defect. CFA supports amendment of the reporting requirements of section 15(b) of the Consumer Product Safety Act to include more triggers for reporting by manufacturers.

We urge your subcommittee to consider adding a third reporting requirement to your bill. CFA believes that manufacturers should be required to report to CPSC when their product fails to comply with the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, and the Refrigerator Safety Act, and all the regulations promulgated thereunder.

Current law requires manufacturers and others to report if their product fails to comply with a standard or ban promulgated under the Consumer Product Safety Act. However, if a manufacturer violates the small parts toy test or the mandatory crib standard or any of a number of regulations promulgated under the FHSA or other Acts, then there is no obligation to report this to CPSC.

CFA believes that requiring reports for such violations is a cost-effective means of helping to keep unsafe dangerous products out of the hands of consumers.

The third point I would like to address is the provision regarding voluntary standards. CFA is pleased to see that the draft bill includes this provision. The right to challenge the inadequacy of a voluntary standard or the delay in the standard's development is a needed safeguard for a statutory framework that permits a safety agency to forego regulatory intervention in favor of private sector initiatives.

Please do not misunderstand our position. CFA strongly supports the concept of voluntary safety standards. However, our review of CPSC's reliance on voluntary standards has led us to the conclusion that the concept of deferral to voluntary standards embodied in sections 7 and 9 of the Consumer Product Safety Act has been abused. CFA believes that the voluntary standard petition provision provides a limited review of voluntary standards matters before the Commission.

The fourth area I would like to talk about are the time limits for proposed rules. By imposing a limit on the length of time between the publication of an advance notice of proposed rulemaking and a notice of proposed rule, with a time extension granted for good cause, Congress will help ensure that safety goals are reached rather than condoning CPSC foot-dragging.

The need for such a time limit is exemplified by the current rulemakings on cigarette lighters and small parts in children's toys. In both cases the Commission has estimated that rulemaking will take four years or longer.

In conclusion, CFA urges you to make passage of the CPSC reauthorization bill a top priority of the subcommittee. We believe that the provisions of the draft legislation will enable this small agency to do a bigger and better job. The American public deserves a CPSC that is fully equipped to address hazardous consumer products.

Thank you.

[The statement and questions follow:]

STATEMENT OF MARY ELLEN R. FISE, PRODUCT SAFETY DIRECTOR, CONSUMER FEDERATION OF AMERICA

Mr. Chairman and members of the Subcommittee, I am Mary Ellen Fise, Product Safety Director for Consumer Federation of America (CFA). CFA is a non-profit consumer advocacy organization representing more than 240 local, state and national consumer organizations with a combined membership of more than 50 million Americans.

Monitoring the safety of consumer products and prodding the Consumer Product Safety Commission (CPSC) to fulfill its statutory responsibility to protect consumers from hazardous products are complimentary priorities of CFA. In 1987, we reported to your subcommittee on a number of glaring safety hazards that had not been addressed by the Commission. We explained that "by dragging its feet and increasingly avoiding regulatory intervention, the CPSC has signalled to industry that it need not act expeditiously or even effectively to address consumer safety problems."

Nearly two years later we find that tentative (and in some cases, faltering) steps have been taken, but consumers are still not adequately protected. The current lack of a quorum for action compounds the problem further. The only sign of hope is that the agency's recent change in leadership will presage a new era for this small but important agency.

Before discussing the needed changes in CPSC law and reauthorization legislation, I would like to express our appreciation to Senators Bryan and Gorton for questioning the

Office of Management and Budget's proposed budget marks for CPSC.

CFA believes that this subcommittee must also express its concern about the CPSC budget to your colleagues on the Appropriations Subcommittee on HUD-Independent Agencies. CPSC is desperately in need of more funding. When Congress created this agency in 1972 they sought to build a fortress for product safety, an agency that would protect our citizens from needless deaths and injuries. Instead, the CPSC is more like a sand castle---and each new budget year like a crashing wave, depleting the agency of its strength because of the failure to provide additional resources. This, coupled with tidal wave-size budget cuts delivered by the Reagan administration, has sent the agency into near oblivion.

It is time to shore up CPSC and put it back into the business it belongs--saving lives. Its current budget for fiscal year (FY) 1989, at $34.5 million, is actually less than the amount authorized for the agency in its first year of operation.[1] This is ludicrous. CFA strongly encourages your subcommittee to urge your colleagues to substantially increase the CPSC budget. In that same vein, we urge you to clearly indicate that the low authorization amounts contained in your reauthorization bill are minimal amounts rather than upper limits binding agency budget requests.

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[1] CPSC's budget authority in 1974 was $34,776,000. The agency was appropriated $30,900,000.

CPSC Reauthorization Legislation

CFA is pleased to offer its support for the draft legislation to reauthorize CPSC. CFA believes that this bill will enable the agency to perform more effectively and efficiently. Swift action on reauthorization legislation by your subcommittee is urgently needed.

I would like to note that many of the CPSC reauthorization provisions supported by CFA are also endorsed by the Coalition for Consumer Health and Safety, a group of 13 consumer and health organizations and 13 insurance companies and associations, in its just released "Consumer Health and Safety Agenda." I offer that document for the record, calling the subcommittee's attention to the Home and Product Safety chapter and specifically to the recommendations regarding CPSC. CFA offers the following more specific comments on the draft CPSC reauthorization legislation.

Penalties

CFA is pleased to see that this draft CPSC reauthorization legislation contains language regarding penalties. However we believe these provisions need to be strengthened in two respects.

Section 11 of the draft bill provides for assessment of civil penalties for violations of the Federal Hazardous Substances Act (FHSA). CFA heartily supports this provision; we believe the unsafe toys and children's products identified in 1988 alone illustrate the need for civil penalties.

In fiscal year 1988, 148 toys and children's products were found by CPSC to be in violation of mandatory standards. Of these 148: 107 were toys and baby rattles; 8 were pacifiers and pacifier holders; 8 were items of nursery equipment such cribs, strollers and walkers; 15 were children's clothing; and 8 were bicycles. Yet, for all of these violations, the CPSC and our U.S. Treasury collected not one cent. Manufacturers were required to recall products or undertake corrective action plans, but that is all. Given the limited resources of the agency to police the market for violative products and the fact that there really is no punishment for violating the law, we suspect that some manufacturers are willing to take their chances. Unfortunately, the chances they are taking are with our children's lives. Thus, we are happy to see a civil penalty provision for the FHSA as part of this legislation.

CFA believes, however, that the legislation should not stop there. The Commission should also be given the right to assess civil penalties for violations of the Flammable Fabrics Act (FFA), the Poison Prevention Packaging Act (PPPA) and the Refrigerator Safety Act (RSA). Like the FHSA, each of these acts do contain criminal penalty provisions,2 but because such criminal cases require a greater burden of proof they are infrequently utilized. Thus, the deterrent effect of such

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2 The Poison Prevention Packaging Act cross references other federal acts, including the Federal Hazardous Substances Act. A violation of PPA section 2(2)(D) is deemed a misbranded hazardous substance under FHSA and thus criminal penalties under FHSA could ensue.

penalties is not achieved.

It should be noted that 7 of the children's clothing violations mentioned above and one nursery product violation were for failure to comply with flammability requirements promulgated pursuant to the Flammable Fabrics Act. Again, there were no penalties collected. CFA urges you to expand the civil penalties provision of section 11 of the draft bill to include all of the CPSC laws currently devoid of civil penalties.

In addition to adding these new penalty provisions, we believe that the penalty amounts currently contained in all five acts administered by the agency, including the Consumer Product Safety Act (CPSA) need to be adjusted for inflation. We are pleased to see that section 11 of the draft bill increases the amount of civil penalties under the CPSA. We suggest that the criminal penalty amounts similarly be adjusted.

The CPSA provides for the imposition of civil penalties of $2000 per violation of the Act with a maximum total penalty of $500,000. Due to inflation, these penalties are worth only 36 percent of their original value, or $720 and $180,000, respectively. Adjusted for inflation, these penalties would be $5520 and $1.38 million today. A broad criminal code revision several years ago revised criminal penalties under the FHSA but not those contained in the CPSA. Thus the CPSA criminal penalties have remained unchanged in the last sixteen years, with a maximum $50,000 fine or one year imprisonment or both.

CFA urges the adoption of a penalties provision that would adjust all the existing CPSC laws' penalties to keep pace with inflation. By restoring penalties to their original value contemplated at enactment, the effectiveness of law enforcement will be enhanced and needed revenues can be collected.

Finally, CPA believes that automatic periodic increases, in CPSC penalties, tied to the inflation rate, should be included in this legislation. While requiring a report to Congress on penalties assessed will help focus attention on this issue, we believe you have an opportunity now to assure that penalties in the future do not become as outdated as they currently are. Measures need to be included in this reauthorization legislation to assure that subsequent periodic adjustments of penalties are achieved.

Increasing Reporting of Unsafe Products

One means in which CPSC is able to learn about unsafe consumer products is through manufacturer reports to the Commission that a product fails to comply with an existing standard or ban or may contain a defect. Such reports serve as an early warning system, enabling the Commission to take action sooner, thereby saving lives and preventing injuries. In reviewing section 15 cases, CPSC has found that industry has tended to report lower level product hazards, or those less likely to cause serious injury or death. However, for the most serious hazards the agency has to rely on its own resources to uncover these unsafe products. CPSC's concern about the lack of reports led them to make Section 15 Reporting a priority project for fiscal year 1990.

CFA believes that the agency would be able to conserve valuable resources used to uncover such substantial product hazards if the reporting requirements under their laws were more detailed as to when manufacturers are required to report. For example, the FY 1990 budget proposal states that in an effort to learn about these hazards CPSC: "will systematically identify and review consumer product liability cases filed in Federal and State courts, through law reporters and liaison with the Association of Trial Lawyers of America. The Commission will also contact product liability attorneys to obtain investigatory information and documents, including expert reports, and to track the proceeding and disposition of potential Section 15 cases."

CFA supports amendment of the reporting requirements of section 15(b) of the CPSA to include more triggers for reporting by manufacturers. We are pleased that section 10 of the draft bill amends section 15(b) of the CPSA and we encourage the subcommittee's support of an additional measure to increase substantial product hazard reporting as well as a review of their proposal to tie reporting to a manufacturer's determination that a serious injury has occurred.

First, let me say that we endorse fully the requirement that manufacturers report to CPSC their failure to comply with a voluntary safety standard that the Commission deferred to under sections 9 (and implicitly, section 7) of the CPSA. If the agency has determined that deferral to a voluntary standard is necessary to protect the public health than it stands to reason that the agency needs to know when there is non-compliance. A report to the agency does not mean that a recall or corrective action plan will necessarily be needed. Rather, it gives CPSC the opportunity to review the matter to determine whether further action is needed.

With respect to the proposed requirement that manufacturers report to CPSC when the manufacturer is named as a party or learns of a lawsuit involving his product, CFA is concerned that the sought objective (increased reporting) will be thwarted by recalcitrant manufacturers. We believe some threshold number of cases could be set as the determinative trigger for when the manufacturer would be required to report. We suggest this as an alternative to reporting when there is a civil action brought for serious injury. With a set number of cases, a bright line for reporting is established and a report is not subject to a manufacturer's determination whether a particular consumer's injury is serious or not.

Finally, we strongly urge your subcommittee to consider adding a third reporting requirement. CFA believes that manufacturers should be required to report to CPSC when their product fails to comply with the Federal Hazardous Substances Act, the Flammable Fabrics Act, the Poison Prevention Packaging Act, the Refrigerator Safety Act and all regulations promulgated thereunder. Current law requires manufacturers and others to report if their product fails to comply with a standard or ban promulgated under the CPSA. However, if a manufacturer violates the small parts toy test or the mandatory crib standard or any of a number of the regulations promulgated under the FHSA or other acts, then there is no obligation to report this to CPSC. CPA believes that requiring reports for such violations is a cost-effective means of helping to keep unsafe dangerous products out of the hands of our children and other consumers.

Petition Regarding Voluntary Standards

CPA is pleased to see that the draft bill includes a petition provision to address the problems associated with deferral to voluntary standards. The right to challenge the inadequacy of a voluntary standard or the delay in the standard's development is a needed safeguard for a statutory framework that permits a safety agency to forego regulatory intervention in favor of private sector initiatives.

Please do not misunderstand our position---CPA strongly supports the concept of voluntary safety standards. We believe they can and do play an important role in addressing safety issues that our government will never have the time nor dollars to address. However, our review of CPSC's reliance on voluntary standards has led us to the conclusion that the concept of deferral to voluntary standards embodied in sections 7 and 9 of the CPSA has been abused. When the agency is willing to wait 8 or more years for a voluntary standard to be developed as it has in the cases of home playground equipment, unvented gas space heaters and swimming pool covers; and when the agency approves a voluntary standard for all terrain vehicles (ATVs) despite the fact that it fails to address lateral stability, a major factor in accidents killing and injuring consumers---procedural safeguards are needed. CPA believes that the voluntary standard petition provision included in this draft legislation provides a limited review of voluntary standards matters before the Commission.

CPA also supports section 8 of the draft legislation which provides additional clarification to CPSA sections 7 and 9's provisions regarding deferral to voluntary standards. By requiring that voluntary standards be in existence at the time of deferral, that interested persons be allowed to comment on a voluntary standard under consideration by the Commission and by requiring the agency to monitor the compliance with standards, the integrity of the voluntary standard deferral process is assured.

Time Limits for Proposed Rules

CPA believes that section 7 of the draft reauthorization legislation contains another important procedural safeguard critical to the improvement of the agency's performance in protecting consumers. By imposing a limit on the length of time between the publication of an Advance Notice of Proposed Rulemaking (ANPR) and a Notice of Proposed Rule (NPR), with a time extension granted for good cause, Congress will help assure that safety goals are reached rather than condoning years and years of foot dragging.

The need for such a time limit is exemplified by two of the issues currently the subject of CPSC rulemaking--cigarette lighters and small parts in children's toys. In both of these cases the Commission has estimated that rulemaking will take four years or longer. Shortening the gap between an ANPR and an NPR, will allow final rules to be achieved more quickly. By retaining the Commission's right to terminate the rulemaking and allowing them to give extensions for good cause, the regulatory process will have flexibility without an undue degree of laxity.

Qualifications, Quorum and Personnel

CPA supports section 2 of the draft bill calling for the President, when making appointments to the Commission, to consider individuals who have experience in areas related to consumer product safety. Given the agency's very limited resources, it is imperative that the leaders of the agency be sufficiently prepared to carry out their mandate.

While CPA supports the appointment of the full complement of five Commissioners, we recognize the importance in changing the quorum requirement from three to two when there are two vacancies. This simple change will enable the Commission to operate most effectively in that situation.

CFA also supports the setting of a personnel floor for CPSC and we encourage the subcommittee to consider such a proposal. In 1974, its first full year of operation, the Commission had 786 full-time employees; at full strength, in 1977, the agency had 914 full-time employees. Yet, today it has only 519. CFA believes that it is critical for Congress to prevent further whittling away of the CPSC staff by imposing a personnel floor for the agency.

Cost-Benefit Analysis

Section 9 of the draft legislation makes it clear that the Commission shall not be required to prepare a cost-benefit analysis when deciding whether to bring actions under sections 12 and 15 of the CPSA. CFA supports this provision. However, we believe that the second provision in both the amendments to section 12 and 15, which preclude the Commission from comparing costs and benefits for actions voluntarily indicated by a manufacturer, should be revised. A strict reading of these provisions would preclude the Commission from comparing costs and benefits when the manufacturer had proposed a clearly inadequate voluntary corrective action. We question whether this was the proposed intention of such provisions and request that such sections be reviewed and amended to make it clear that cost-benefit analysis shall not be a hindrance to the Commission's functioning under sections 12 and 15 of the CPSA.

Information Disclosure

CPA is sorry to see that a provision which would amend section 6(b) of the CPSA to allow the release of non-Commission generated data is not included in the draft CPSC reauthorization bill. We believe that providing such information with a disclosure that the Commission is not responsible for the accuracy of the information, puts those who receive such information on notice that there might be others who differ with the content of the documents released.

CPA believes that by providing this information to the public, consumers will be able to learn more readily about possibly unsafe products. Moreover, by removing the clearance requirements for this type of information, thousands of dollars can be saved by CPSC and utilized for other more important safety efforts.

Conclusion

CPA urges you to make passage of the CPSC reauthorization bill a top priority of this subcommittee. We believe the provisions of the draft legislation will enable this small agency to do a bigger and better job. The American public deserves a CPSC that is fully equipped to address hazardous consumer products.

QUESTIONS OF SENATOR BRYAN AND THE ANSWERS THERETO

Q: I UNDERSTAND THAT THE CONSUMER FEDERATION OF AMERICA RECENTLY ISSUED A REPORT, IN CONJUNCTION WITH INSURERS AND CONSUMER AND HEALTH ORGANIZATIONS. THAT REPORT CALLED FOR INCREASING THE BUDGETARY RESOURCES FOR THE CPSC, IN PART TO ENABLE IT TO SHORTEN THE TIME PERIOD FOR RULEMAKING.

--WILL BUDGETARY INCREASES ALONE ANSWER THIS?

--IF NOT, IS THE ONE YEAR TIME PERIOD IN THE DRAFT BILL REALISTIC? WHY OR WHY NOT?

CFA believes that the one year rulemaking time limit contained in the bill is realistic and will help achieve safer products in a quicker amount of time. There are those who might argue that one year is too short, given that the development of some safety standards require longer periods of time. We believe that allowing for an extension for good cause will address these situations. It is very important for Congress to eliminate the "endless" rulemakings that the current laws allows.

Q: WHY IS THE CPSC'S RELIANCE ON INDUSTRY'S PROMISES TO DEVELOP A VOLUNTARY STANDARD TROUBLESOME, IN YOUR OPINION?

Simply put, reliance on industry promises to develop a voluntary standard is a roll of the dice. A particularly good example of this problem is the Commission's reliance on the pressed wood industry to develop standards to limit consumer exposure from formaldehyde emissions. CPSC denied CFA's petition for rulemaking in this matter in November 1986, citing the fact that the industry intended to address the hazards through voluntary standards. As of today there are draft standards for these products which CFA, Consumers Union and the CPSC staff have found inadequate. Thus, 2 1/2 years later we are still hoping that the problem might be addressed. If it is not, the Commission will then be in the position of having to start rulemaking because their role of the dice was a bad one. In the meantime, consumers have and continue to be exposed to hazardous levels of formaldehyde.

Q: ONE OF THE PROVISIONS OF THIS DRAFT BILL WOULD PERMIT THE FILING OF A PETITION REGARDING THE TIMELINESS OR ADEQUACY OF VOLUNTARY STANDARD DEVELOPMENT. WHY DOES CFA BELIEVE THIS TO BE IMPORTANT?

A petition allows interested outside parties to challenge agency inaction or the agency's inappropriate informal deferral to voluntary standards. The agency's failure to utilize Section 9 in deferring to voluntary standards makes judicial review difficult. Hence, consumers and others need a mechanism to challenge such action or inaction. CFA believes that petitions for rulemaking should not be denied unless an adequate voluntary standard has been adopted and is being complied with by industry. The agency's denial would then be ripe for judicial review should this be desirable.

Q: I NOTE FROM YOUR TESTIMONY THAT THE CFA SUPPORTS INCREASING THE AMOUNT OF CIVIL PENALTIES TO COVER THE EROSION IN THEIR VALUE DUE TO INFLATION.

--SHOULD WE ALSO CONSIDER AMENDING THE CRIMINAL PENALTY AMOUNT?

CFA believes that both civil and criminal penalties should be increased to provide deterrents for non-compliance by industry. We believe that restoring these penalties to an inflation-adjusted amount originally contemplated at enactment is justified and needed.

Q: CFA DOES NOT BELIEVE THAT FORMAL, COST-BENEFIT ANALYSIS SHOULD BE APPLIED TO COMPLIANCE SITUATIONS, IS THAT CORRECT?

--SHOULD THE CPSC NEVER CONSIDER COSTS AND BENEFITS, OR DO YOU JUST OBJECT TO THE FORMAL PROCESS THAT HAS BEEN RECENTLY USED BY THE CPSC?

The Commission should not use cost-benefit analysis as a measuring stick for whether to bring compliance actions. Rather, CFA believes that the costs and benefits associated with a particular solution or fix can be among the factors (such as severity of the risk, consumer exposure, etc.) considered by the agency in its deliberations. In no case should cost-benefit be required.

Q: INDOOR AIR QUALITY HAS BEEN ONE OF THE PRIORITY PROJECTS OF THE CPSC, AND (I UNDERSTAND) A PARTICULAR INTEREST OF THE CONSUMER FEDERATION OF AMERICA.

--WOULD YOU GIVE ME YOUR ASSESSMENT OF THE CPSC'S EFFORTS IN THIS REGARD?

--WOULD YOU SUPPORT ADOPTION OF STANDARDS FOR PARTICULAR INDOOR AIR POLLUTANTS, SUCH AS FORMALDEHYDE? IS THE CPSC'S EXISTING STATUTORY AUTHORITY SUFFICIENT TO ACCOMPLISH THIS?

CFA is concerned about indoor air quality, particularly as it relates to consumer products and exposure in the home. We believe that CPSC has sufficient statutory authority to address this issue. Product standards can be developed. Unsafe products can be banned. Consumer product labels instructing consumers how products can be used in a safe manner can be mandated. CFA is particularly concerned about formaldehyde, methylene chloride and the adverse health effects of vaporizer and humidifier use. We encourage the Senate to use its oversight authority to assure that adequate progress is made toward reducing consumer exposure to indoor air pollutants.

Senator **Bryan**. Thank you.

Senator **Gorton**. Thank you very much. That was perfectly timed.

Senator **Bryan**. Yes, and beautifully executed. We did not even need the light.

Ms. **Fise**. I do not think I would be able to do that again.

Senator **Bryan**. We appreciate that. Ms. Gilbert.

STATEMENT OF PAMELA GILBERT, CONSUMER PROGRAM DIRECTOR, U.S. PUBLIC INTEREST RESEARCH GROUP

Ms. **Gilbert**. Thanks. I hope I can duplicate that. Thank you, Mr. Chairman and Senator Gorton.

I am Pamela Gilbert, Consumer Program Director for the U.S. Public Interest Research Group. I am testifying today on behalf of both U.S. PIRG and Consumers Union. We very much appreciate this opportunity to express our support for the swift passage of legislation to strengthen and reauthorize the Consumer Product Safety Commission. We also endorse the testimony delivered today by the Consumer Federation of America.

We commend you, Chairman Bryan and Senator Gorton, for the interest you have already shown in revitalizing this beleaguered agency. I, like Mary Ellen, would like to commend you for inquiring into the Office of Management and Budget regarding the CPSC budget. We are also pleased by the speed with which the Subcommittee has begun consideration of CPSC authorization and we hope you will continue to aggressively pursue this important legislation until it is signed into law by the President.

The CPSC is in critical condition. The life support systems that have sustained the agency since 1981 can do little more than keep it breathing. Without immediate medical or Congressional intervention, the patient will remain more dead than alive. The role of the CPSC in protecting the health and safety of the American public is too important to allow this dire situation to go on.

Just consider the following. Consumer products are associated with approximately 30,000 deaths and 33 million injuries in the U.S. every year. Injury is the number one killer in the U.S. from birth to age 44. The economic impact of injuries cost the U.S. an estimated $100 billion annually. Each year more children die in home accidents than from all childhood diseases combined.

Despite these alarming statistics, for eight years now the agency with the responsibility for protecting the public from injury due to unreasonably dangerous products has been allowed to lie virtually dormant. The tragic result has been tens of thousands of needless deaths and injuries.

In 1981, the Reagan Administration proposed eliminating this small but vital consumer protection agency. Although support for the Commission in Congress and among the American people was strong enough to preserve the agency, the preservation came at a high cost. During the course of the next eight years the agency's budget was slashed by nearly 30 percent and its staff was reduced by nearly one-half.

Moreover, the policies and actions of the most recent CPSC chairman seriously undermined the product safety mission of the agency. The direct result of the erosion of commitment and resources to consumer product safety has been tragedy, pain and suffering for thousands of Americans.

According to a report by the Consumer Federation of America, between 1981 and 1987 approximately 1,800 people died and 420,000 were injured due to just four dangerous products for which the CPSC failed to take adequate action.

This year brings a unique opportunity to rejuvenate the CPSC. A new President who promises a more compassionate government, the resignation of the CPSC chairman, and the beginning of a new Congress promises to be the right combination of events to finally put this agency back on the track of protecting the public safety.

In our written testimony we were asked to include our views on the draft legislation that was developed by the Subcommittee. In the interest of time I will not address the specifics of our recommendations, but I, of course, will be happy to answer any questions you have.

I will just summarize that we support most of the provisions of the draft and also recommend that some others be further strengthened and expanded, particularly in the area of penalties. I would like to conclude by addressing two issues that go to the heart of revitalizing this agency.

Since January 3 the agency has had only two commissioners. Due to the quorum requirement of three, for over two months the Commission has been unable to meet to consider agency matters. If this situation is allowed to continue, we may find ourselves faced with an imminent product hazard and the Federal product safety agency will be powerless to act.

Even more likely, the Commission will become more backlogged and standards that have been unduly delayed will be pushed further behind schedule. Meanwhile, deaths and injuries will not wait. We urge you as members of this Subcommittee with the jurisdiction over the CPSC to do what you can to encourage President Bush to act quickly to fill at least one Commission vacancy. Of course, the nominee must be someone committed to the product safety mission of the agency.

In addition, as you know, this agency operates on a tiny budget—50 percent smaller than it was in 1974, its first year of operation. It simply cannot absorb further budget cuts. We are pleased to see that the Subcommittee draft would authorize an increased budget for the agency. However, after adjusting for inflation, even this increase would not provide much additional revenue for the agency.

In the name of the health and safety of American consumers and their children, we request a further increase in budget authorization for the agency and we implore you to use your influence to urge the appropriations committees to appropriate sufficient funds.

Mr. Chairman, Senator Gorton, U.S. PIRG and Consumers Union commend you for your apparent support of strong CPSC reauthorization legislation. We are hopeful that with the passage of this type of legislation, new leadership on the Commission, and an increased budget the Consumer Product Safety Commission will once again effectively protect the health and safety of consumers.

Thank you.

[The statement and questions follow:]

STATEMENT OF PAMELA GILBERT, CONSUMER PROGRAM DIRECTOR, U.S. PUBLIC INTEREST GROUP, ON BEHALF OF U.S. PIRG AND CONSUMERS UNION

Mr. Chairman and members of the subcommittee, I am Pamela Gilbert, consumer program director for the U.S. Public Interest Research Group (U.S. PIRG). I am testifying today on behalf of U.S. PIRG and Consumers Union. U.S. PIRG is the national lobbying office for state PIRGs around the country. PIRGs are nonprofit, nonpartisan consumer advocacy organizations. Consumers Union is a non-profit membership organization founded in 1936. It engages in consumer advocacy before the executive, judicial and legislative branches of government. We appreciate this opportunity to express our support for the swift passage of legislation to strengthen and reauthorize the Consumer Product Safety Commission (CPSC).

Last Congress, through the leadership of Senator Gore and others on this subcommittee, a bill to reauthorize and strengthen the Consumer Product Safety Commission passed the Senate Commerce Committee without objection. Unfortunately, the bill was unable to reach floor consideration before the end of the Congress.

We commend Chairman Bryan and ranking minority member Senator Gorton for the interest you have already shown in revitalizing this beleaguered agency. Your inquiry to the Office of Management and Budget regarding the effects of budget constraints on the CPSC was a particularly timely and effective way of illustrating your concern about the ability of the CPSC to adequately protect consumers. We eagerly await OMB's response. In addition, we are pleased by the speed with which the subcommittee has begun consideration of CPSC reauthorization, and we hope you will continue to aggressively pursue this important legislation until it is signed into law by the President.

THE NEED FOR STRONG PRODUCT SAFETY REGULATION

The Consumer Product Safety Commission (CPSC) is in critical condition. The life support systems that have sustained the agency since 1981 can do little more than keep it breathing. Without immediate medical or congressional attention, the patient will remain more dead than alive.

The role of the CPSC in protecting the health and safety of the American public is too important to allow this dire situation to go on. Consider the following:

* Consumer products are associated with approximately 30,000 deaths and 33 million injuries in the U.S. every year.
* Injury is the number one killer in the U.S. from birth to age 44.
* The economic impact of injuries costs the U.S. an estimated $100 billion annually.
* Each year, more children die in home accidents than from all childhood diseases combined.

Despite these alarming statistics, for eight years now, the agency with the responsibility for protecting the public from injury due to unreasonably dangerous products has been allowed to lie virtually dormant. The tragic result has been tens of thousands of needless deaths and injuries. Moreover, the CPSC's lax regulation and benign oversight of private industry has significantly weakened incentives for manufacturers to voluntarily invest resources in improving product safety.

THE REAGAN YEARS

In 1981, the Reagan Administration proposed eliminating this small, but vital, consumer protection agency. Although support for the CPSC in Congress and among the American people was strong enough to preserve the agency, this preservation came at a high cost. During the course of the next eight years, the agency's budget was slashed by nearly 30 percent and its staff was reduced by nearly one-half. Moreover, the policies and actions of the most recent CPSC Chairman seriously undermined the product safety mission of the agency.

The direct result of the erosion of commitment and resources to consumer product safety has been tragedy, pain and suffering for thousands of Americans. According to a report by the Consumer Federation of America, between 1981 and 1987 approximately 1800 people died and 420,000 were injured due to just four dangerous products for which the CPSC failed to take adequate action.*

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* The products are cigarette lighters, bunk beds, DEHP, and all-terrain vehicles.

A NEW OPPORTUNITY

This year brings a unique opportunity to rejuvenate the CPSC. A new President who promises a more compassionate government, the resignation of the CPSC Chairman, and the beginning of a new Congress promises to be the right combination of events to finally put this agency back on the track of protecting the public safety.

To make this promise a reality, we urge this subcommittee to work with the rest of the Congress and the Bush Administration on a three-pronged approach to revitalizing the Consumer Product Safety Commission:

1.) increase the agency's meager budget of $34.5 million;

2.) quickly nominate and approve a new CPSC commissioner who will aggressively pursue product safety initiatives; and

3.) pass reauthorization legislation that will strengthen the authority and improve the efficiency of the Commission.

We have been asked today to address one critical element of this strategy -- CPSC reauthorization legislation. Our comments will focus on four aspects of the agency's structure and functions that are particularly important to improving the CPSC's effectiveness:

- regulatory process
- penalties
- information-gathering and disclosure
- administrative structure

As requested, our statement will include our views on draft legislation that was developed by the subcommittee.

REGULATORY PROCESS

In 1987, the Consumer Federation of America (CFA) published a review of the CPSC's performance during the previous six years. The report provided concrete documentation of the astounding failure on the part of the agency to attend to even the most basic of its statutory obligations.

The CFA report used examples of matters pending before the CPSC to illustrate one of the agency's most glaring deficiencies -- the Commission's repeated undue reliance on voluntary industry standards. The report cited eleven instances in which consumers continue to be at risk from exposure to dangerous products because of excessive time delays in commencing regulatory actions, deferral to inadequate or non-consensus voluntary standards, and reliance on non-existing voluntary standards.

We support provisions from the subcommittee's draft reauthorization legislation that address the Commission's stubborn refusal to regulate for safety when private industry fails to adequately police itself. In particular, we support amendments to the Consumer Product Safety Act and the Federal Hazardous Substances Act that would:

(1) require the CPSC to either publish a proposed consumer product safety rule or terminate the rulemaking within a time certain from publication of an advanced notice of proposed rulemaking (ANPR);

(2) allow the Commission to rely on voluntary standards only where they are already in existence and where interested persons have been given an opportunity to submit their views on the standards to the Commission;

(3) require the Commission to devise procedures to monitor compliance with voluntary standards; and

(4) allow interested parties, including injured consumers and consumer organizations, to petition the CPSC for review of the adequacy of voluntary standards or the timeliness of the development of voluntary standards. Of particular importance are requirements that the Commission respond to such petitions within a time certain, and that the decisions of the Commission be subject to judicial review.

Under current law, there is no explicit statutory time limit between the publication of an ANPR and a proposed rule. The unfortunate and tragic consequence of this has been excessive delays between the time the Commission has before it evidence of a significant product hazard and the establishment of an adequate safety standard to address that hazard. During these delays, deaths and injuries mount.

For example, in 1985 the CPSC received a petition to develop a standard for making disposable lighters child resistant. Although the CPSC staff has found the existing voluntary standard for lighters to be insufficient to protect children under five, and although available evidence indicates that approximately 125 children under five die each year due to accidents with disposable lighters, the Commission did not publish an ANPR until last year. The agency now estimates it will take four years to complete the rulemaking. Seven years of waiting for a final rule means nearly 900 children under five will die.

In addition to waiting too long to complete the regulatory process, the CPSC has repeatedly chosen not to regulate a dangerous product, and instead, has relied on a voluntary industry standard that either does not exist or has been developed without participation by interested parties outside of the industry. Furthermore, once the Commission has relied on a voluntary standard, it often defers to the industry's judgment regarding the efficacy of, and compliance with, that standard. In effect, by relying on voluntary strandards in almost all situations and by failing to monitor those standards, the CPSC has turned its responsibilities over to the industries it is charged with regulating.

For example, since 1983, the CPSC has had before it a petition to promulgate a safety standard for swimming pool covers and to ban free-floating solar pool covers. Rather than developing a mandatory standard, in 1985 the Commission denied this petition and decided to defer to a voluntary industry standard. At the time this decision was made, a voluntary swimming pool cover standard did not exist, and to this day, it still has not been finalized. Between July 1973 and March 1985, 34 people were victims of injuries from swimming pool cover incidents, 26 of whom died. The Commission must not be permitted to sit on its hands for years, deferring to an industry standard for pool covers that does not exist, while drownings and injuries continue unabated.

PENALTIES

Monetary penalties are necessary to deter manufacturer misconduct that leads to the production of unreasonably dangerous products. Penalties are meaningless, however, if they are not high enough to impose real costs on the wrongdoer or if they are unlikely to be pursued by the enforcing authority. We support provisions of the subcommittee draft that address the problems of the absence and inadequacy of civil penalties under CPSC laws. In addition, we suggest that further improvements be made in the CPSC's authority to impose penalties for violations of its laws.

Under current law, the CPSC may not seek civil penalties against corporations that violate the Federal Hazardous Substances Act (FHSA), the Flammable Fabrics Act (FFA), the Poison Prevention Packaging Act (PPPA) or the Refrigerator Safety Act (RSA). This means that companies that refuse to comply with safety standards for toys, hazardous substances, flammable fabrics, childproof containers and many other products can not be fined by the CPSC for their dangerous misconduct.

Criminal penalties are available as enforcement mechanisms for each of these acts; however, criminal sanctions alone do not provide sufficient deterrence. First, criminal penalties require proof beyond a reasonable doubt and a criminal intent -- increased burdens that keep criminal penalties from being used in many cases. Second, since criminal enforcement actions must be brought by the Justice Department -- an agency where product safety matters are not the highest priority -- it is even less likely that prosecutions will be brought.

The subcommittee draft would establish civil penalties for the FHSA. We wholehearedly support this provision, and we recommend adding civil penalties to the FFA, PPPA, and RSA as well.

The civil penalties contained in the Consumer Product Safety Act (CPSA) have remained unchanged since the law was passed in 1972. Those penalties are $2,000 for each violation of the act, with a maximum total of $500,000. As a result of inflation, these penalties are worth only $720 and $180,000, respectively, in today's dollars. Adjusted for inflation, the penalties would be $5,520 and $1.38 million today. To restore the economic impact of these penalties to the value that Congress originally intended, they must be increased to account for inflation. We support the provisions of the subcommittee draft that establish civil penalties for the CPSA and the FHSA at $5,000 per violation to a maximum of $1.25 million. These same adjustments should be made for the FFA, PPPA and RSA.

The subcommittee draft also requires the CPSC to report to Congress annually the number of civil penalties it has imposed, the violations for which penalties were imposed, the amount of revenue recovered, and the effect of inflation on the penalties. These reports will be extremely helpful to Congressional oversight of the enforcement of federal product safety laws. Recent history illustrates, however, that identification of problems at the CPSC by the Congress does not always lead to the passage of legislation to correct those problems. Witness the fact that the Commission has not been reauthorized since 1981, despite hearing records full of evidence of the inadequacy of CPSC consumer protection efforts. Therefore, we urge you to provide for automatic inflationary adjustments of the civil penalties under CPSC laws.

INFORMATION-GATHERING BY CPSC

Settlements in many personal injury lawsuits against product manufacturers include an agreement among the parties not to disclose any of the information that was discovered during the lawsuit. These "protective orders" preclude attorneys and injured people from informing government bodies, like the CPSC, about the dangers of products under the government's regulatory authority. Protective orders also keep from the public information that might enable consumers to avoid injuries that result from exposure to dangerous products. As a result of the practice of sealing discovery documents in product liability lawsuits, federal regulatory agencies often find out about the nature and extent of product hazards long after the dangers in those products have been discovered by private parties.

For example, accidents from Bic disposable lighters have been associated with at least ten deaths and hundreds of injuries since 1979. Engineering experts, including CPSC staff, believe that Bic lighters have a defect which prevents the lighter from automatically shutting off after the thumb lever that ignites the lighter is released. Although complaints about these lighters have been sent to the CPSC for the last decade, Commission spokespersons claim that the CPSC has been unable to develop enough evidence to legally justify a recall.

Attorneys who have brought liability claims against Bic say that, before Bic will settle a case, the company typically requires opposing attorneys to keep secret information they have learned. It is likely that the evidence needed by the Commission to prove a product defect has been collected by attorneys in product liability lawsuits against Bic, but is now under seal due to settlement agreements in those cases.

Current law requires product manufacturers and sellers to inform the CPSC if a product fails to comply with an applicable safety rule or if the product may create a substantial product hazard. This latter requirement is quite subjective, and in predictable fashion, it does not result in many hazard reports to the agency. In addition to these requirements, product manufacturers should be required to report to the Commission personal injury liability claims pending against them regarding any consumer products they sell -- a far less subjective standard. Furthermore, since voluntary standards have taken the place of mandatory standards in many instances, manufacturers should be required to report to the Commission failures of their products to meet voluntary standards. Both of these proposals are contained in the subcommittee's draft legislation as amendments to the Consumer Product Safety Act. We recommend that the FHSA, FFA, PPPA and RSA be amended as well to include the same reporting requirements.

Reports of product liability claims would enable the Commission to develop a more comprehensive data base of information on product hazards. This data base would provide the Commission with information about potential product hazards as these hazards occur. This would enable the agency to begin public education campaigns, hazard investigations and regulatory actions much earlier and with more information than they currently do. In addition, this information could provide the Commission with the evidence it needs to justify recalls and other orders against dangerous products.

Reports of violations of voluntary standards would, of course, more fully complete the CPSC's information bank on products that fail to meet established safety standards.

INFORMATION DISCLOSURE BY THE CPSC

The CPSC is unique among federal agencies in its inability to release important safety information to the public. Section 6(b) of the Consumer Product Safety Act, enacted in 1981 following the Reagan Administration's attempt to eliminate the agency, bars the release to the public of safety information that identifies a particular product until the agency goes through a burdensome and lengthy procedure. The Commission must send a copy of the information to the named manufacturer, allow the manufacturer to comment on the information, review the information and the manufacturer's comments, and "take reasonable steps to assure" that the information is accurate and fair. If these conditions are not met, the manufacturer can prevent the information from being disclosed by filing a lawsuit in federal court.

This procedure is a tremendous drain on the resources of a Commission that is already understaffed and underbudgeted. In addition, the threat of litigation places a chilling effect on the willingness of Commission employees to release information to the public. Furthermore, and most important, section 6(b) hampers the ability of the public to learn vital information about product hazards.

The subcommittee draft does not address section 6(b) at all. We believe section 6(b) should be repealed. At a minimum, the provision should be significantly amended to ensure that the public can receive, without censorship or delay, information about product dangers that the Commission has collected but has not itself produced.

ADMINISTRATIVE STRUCTURE

In recent years, various administrative and personnel problems have greatly contributed to the ineffectiveness of the CPSC. Although many of these difficulties can be traced to the former Chairman, the following proposals to improve the agency's structure contained in the subcommittee draft would enhance significantly the CPSC's effectiveness regardless of the personalities of the sitting Commissioners.

First, to help ensure that the members of the Commission have a familiarity with consumer product safety, the President should be required to consider for appointment to the agency individuals who have background and expertise in areas related to consumer product safety.

Second, to ensure that top-level personnel, including the Director of Compliance, are responsible to the full CPSC and not just to one individual, these personnel should be appointed with the concurrence of all Commission members. In addition, these executive employees should not be removed from their positions except by action of the full Commission. Also, top-level positions should be filled on an acting basis only for a period not to exceed a time certain, such as 90 days. Again, this will help ensure that these personnel are responsible to the whole Commission.

Third, the Consumer Product Safety Act should be amended to change the quorum requirement from three commissioners to two whenever there are two vacancies on the CPSC. Current law provides for a Commission with five members, and therefore, the presence of three Commissioners is required to take formal Commission action. Due to constraints imposed by the appropriations process, the CPSC has had only three Commissioners for a number of years. The quorum requirement of three has meant that the absence of one member can prevent the Commission from considering agency matters. In fact, the Commissioners were unable to resolve certain issues for six months during 1987 for that very reason. We would support restoring the Commission to its originally-intended five members. Until that time, however, the quorum requirement should be reduced to comport with reality.

Finally, the agency simply does not have enough personnel to adequately carry out its responsibilities. Since 1980, the CPSC staff has been reduced from 975 employees to 519 -- a cut of nearly 50 percent. It is vital that the Consumer Product Safety Act establish a minimum number of employees for the CPSC so that future administrations that are hostile to the agency can not eliminate the Commission by draining it of personnel. We recommend adding a provision to the subcommittee draft that would establish a personnel floor for the CPSC that is higher than the current inadequate staffing level.

CONCLUSION

We would like to conclude by addressing two issues that go to the heart of revitalizing this critical agency. Since January third, the agency has had only two Commissioners. Due to the quorum requirement of three, for over two months the CPSC has been unable to meet to consider agency matters. This means that the Commission can not issue repair, replacement or refund orders, make imminent hazard assessments, nor approve proposed or final rules from the Commission staff. If this situation is allowed to continue, we may find ourselves faced with an imminent product hazard and the federal product safety agency will be powerless to act. Even more likely, the Commission will become more backlogged, and standards that have been unduly delayed will be pushed further behind schedule. Meanwhile, deaths and injuries won't wait.

We urge you, as members of the Senate subcommittee with jurisdiction over the CPSC, to do what you can to encourage President Bush to act quickly to fill at least one Commission vacancy so that the quorum requirement can be met. Of course, the nominee must be someone with background and commitment to consumer product safety.

In addition, as you know, this agency operates on a tiny budget - 50 percent smaller than it was in 1974, its first year of operation. It simply can not absorb further budget cuts. President Reagan's proposed budget recommended reducing the agency's funding by $1 million, and we understand that President Bush has adopted this proposal as well. We are pleased to see that the subcommittee draft would authorize an increased budget for the agency. However, after adjusting for inflation, even this increase would not provide much additional revenue for the agency. In the name of the health and safety of American consumers and their children, we request a further increase in budget authorization for the agency, and we implore you to use your influence to urge the appropriations committees to appropriate sufficient funds.

Mr. Chairman, U.S. PIRG and Consumers Union commend you and Senator Gorton for your apparent support of strong CPSC reauthorization legislation. We are hopeful that with the passage of this type of legislation, new leadership, and an increased budget, the Consumer Product Safety Commission will once again effectively protect the health and safety of consumers.

Thank you.

QUESTIONS OF SENATOR BRYAN AND THE ANSWERS THERETO

1.) I believe that the CPSC's refusal to regulate for product safety during the Reagan Administration was caused by a combination of a lack of commitment by the Commission leadership and deficiencies in the statutes administered by the CPSC. These deficiencies, many of which are addressed in the subcommittee's draft legislation, include: regulatory procedures that enabled the Commission to rely on voluntary standards that either were inadequate or did not exist; insufficient penalty provisions; inadequate reporting requirements; burdensome procedures for disclosure of information; and an administrative structure that vested too much power in the Commission Chair.

2.) (a) The Consumer Product Safety Act and the Federal Hazardous Substances Act require the CPSC to defer to voluntary standards if: (i) compliance with the standard is likely to result in the elimination or adequate reduction of the risk of injury; and (ii) it is likely that there will be substantial compliance with such standard.

Clearly, the Commission must conduct a thorough investigation of a voluntary standard to make a determination that the standard meets these conditions. That determination, however, will be relatively meaningless if the standard is not carefully monitored to ensure it continues to meet these criteria. Therefore, the monitoring plan for voluntary standards should enable the CPSC to assess whether the standard is adequate and whether there is, in fact, substantial compliance. If the Commission finds either of these conditions to be absent, then the rulemaking should be reopened to examine the need for a mandatory rule.

(b) I believe that, at the present time, the CPSC does not have sufficient resources to adequately oversee compliance with voluntary standards. In fact, the Commission apparently lacks the resources to monitor compliance with mandatory rules. For example, a few weeks ago, a CPSC regional office requested the Minnesota Public Interest Research Group to participate in a voluntary effort to monitor compliance with the Commission's mandatory ban of lawn darts. It is appalling that a federal agency was forced to approach a nonprofit, public interest group for volunteer help in carrying out an important responsibility of that agency -- overseeing compliance with a mandatory health and safety rule.

In order to ensure that voluntary and mandatory safety standards are effectively protecting American consumers from dangerous products, the Commission must be able to monitor industry compliance with such standards. It is imperative, therefore, that Congress authorize and appropriate sufficient funds to enable the agency to adequately carry out its mandate.

3) Since 1981, the CPSC has repeatedly chosen to rely on voluntary industry standards rather than issue mandatory safety rules. Time and time again, the standard relied upon was still being developed, was inadequate, or was not being complied with. Under current law, whenever the CPSC inappropriately relies upon a voluntary standard before issuing an advanced notice of proposed rulemaking, consumers and other interested parties have little or no recourse to appeal that decision. The provision in the subcommittee draft that enables interested parties to petition for review of voluntary standards addresses this problem by providing a process in which the Commission's decision to rely on a voluntary standard can be reviewed by a court. While we support the provision in the subcommittee draft for this reason, we would support other approaches as long as they, too, provide effective recourse when the CPSC improperly relies on voluntary standards.

4) The 1981 amendments to the CPSC's statutes requiring reliance on voluntary standards were intended to enable industry to avoid government-mandated standards by voluntarily addressing safety problems. The amendments were not intended, however, to authorize the Commission to rely on a "promise" of voluntary industry action. When the Commission defers to a promise to develop a safety standard, it is, in effect, abdicating its responsibility to protect the public from unreasonable risks. A promise to develop a standard for child-proofing lighters will not save the lives of the 125 infants who die in lighter-related fires each year.

5) Yes, we do support notification to the CPSC about personal injury lawsuits involving products. In addition, we believe that all of the CPSC's statutes should contain section 15(b) reporting requirements. Under current law, the FHSA (which regulates toys, among other products), FFA, and PPPA do not explicitly require manufacturers to report dangerous or defective products to the Commission. Such requirements are contained only in the interpretive regulations of the Commission, and therefore, do not carry the same force of law, and could be changed by the Commission with out Congressional approval.

(a) As I stated in my testimony, I believe that this reporting requirement would significantly increase the CPSC's data base of information on product hazards, and would get this information to the Commission in a more timely manner.

(b) I do not believe that reporting product lawsuits to the Commission would worsen a manufacturer's liability situation. When a manufacturer reports the filing of a product liability lawsuit, the manufacturer is neither admitting nor denying liability, but rather, is reporting a factual occurrence - the filing of a lawsuit. In contrast, when a manufacturer reports a product because it presents a substantial risk of injury, the manufacturer is making a subjective assessment that its product may be dangerous. That type of admission may worsen the manufacturer's position in a liability suit. Largely because of these liability concerns, we believe that the substitute provision in the legislation as it was passed by the Commerce

Committee will not succeed in significantly increasing the reporting of dangerous products by manufacturers. Manufacturers are simply very unlikely to admit that their product "creates an unreasonable risk of injury."

6) Yes, I believe that the subcommittee should increase the criminal penalty amounts in addition to increasing civil penalties. In order to provide meaningful deterrence, monetary penalties must be set high enough to impose real costs on the wrongdoer. Like civil penalties, the criminal penalties in the CPSC's statutes have remained unchanged since 1972, which means that they are worth only 36% of their original value. At a minimum, we urge the subcommittee to increase the statutes' criminal penalties to keep pace with inflation. We also believe that both the CPSC's criminal and civil penalties should be automatically indexed to inflation to ensure that their values are not eroded with time.

7) In general, we do not believe that cost-benefit analyses should be applied to compliance situations. Compliance actions, such as product recalls and imminent hazard assessments, may often be appropriate even though only a small number of deaths or injuries have occurred in connection with the product. In these instances, a cost-benefit analysis may conclude that the costs of the action outweigh the benefits simply because the number of deaths and injuries that would be avoided is not yet known. In effect, requiring a cost-benefit analysis in compliance situations may force the CPSC to wait for a "body count" before it takes remedial action -- a bad policy and counter to the agency's congressional mandate.

(a) We have not made a policy decision that costs and benefits should never be compared in regulatory decisionmaking. We do object, however, to a requirement that formal cost-benefit analyses be conducted in every compliance case, and we believe that a cost-benefit analysis should never be the only criterion in regulatory decisions.

8) We support setting a personnel floor for the CPSC because the agency already lacks enough personnel to adequately carry out its responsibilities. The Commission's staff has been cut by nearly 50% since 1980, while U.S. population and the number of products in the marketplace have grown. The agency should be restored to its previous staffing level. At a minimum, a floor of 525 employees should be established to stop the steady erosion of personnel, and this level should increase with each reauthorization to bring the agency back to full strength.

9) It is very important to explicitly require the President to consider individuals with consumer expertise when making nominations to the CPSC. We believe that an expression of a congressional preference for experienced consumer officials on the CPSC will help direct the President toward nominees who are committed to the mission of the agency. This agency is too important to the health and safety of the American people to allow it to be run by political appointees without adequate experience or commitment to public safety.

Senator BRYAN. Thank you very much, Ms. Gilbert. You met the time constraints as well.

Mr. Gimer, the challenge is to you now, sir.

STATEMENT OF RICHARD H. GIMER, ON BEHALF OF THE U.S. CHAMBER OF COMMERCE

Mr. GIMER. Thank you, Mr. Chairman, Senator Gorton.

My remarks will be addressed entirely to the specific provisions of the proposed bill which I understand still remains numberless. Is that correct?

Senator BRYAN. It is still in draft form, Mr. Gimer.

Mr. GIMER. Thank you.

The formal statement that we have filed on behalf of the Chamber with the Committee deals with most of the proposed amendments on a section-by-section basis, and for purposes of brevity this afternoon I group my comments into basically three categories—to highlight the proposals that the Chamber supports and proposals that the Chamber questions, and proposals that the Chamber opposes.

First of all, over the years the U.S. Chamber of Commerce has consistently supported reauthorization of the CPSC and certainly does support this reauthorization. Our problems historically have been with the specifics of proposed amendments to the statute.

The Chamber favors the proposed amendments which would require the President to give attention to certain types of qualifications in his commissioner nominees; supports the proposals which would formalize the procedures by which the Commission sets its priorities; and supports the provisions of the bill that would expressly require that parties be given an opportunity to present comments in a rulemaking context to proposals by the Commission to defer to voluntary standards.

On the issues or the points that the Chamber questions, while we appreciate the problem that the Commission is having now, that of being a five-member commission with two sitting commissioners, we do question the viability of the floating quorum concept and think that the Congress should be making up its mind as to what the full complement of commissioners will be at this agency and then getting about seeing that it is fully manned.

The main problem with the floating quorum is that it is all right for two commissioners to decide they want to do something, but, because it is quite common for a given regulatory initiative to span many years, it is problematic for the Commission to take too many serious initiatives based upon the votes of two commissioners. Many of the decisions that they would make in that context would be subject to being overridden and challenged as the President would appoint additional commissioners.

You might reach a point where you really never get anything done. You would be reassessing issues merely because of the addition of additional commissioners.

In the area of proposed amendments which are opposed by the Chamber, we, like Commissioner Dawson, think that the proposal by which petitioners could challenge the interim deference the Commission is giving to a given voluntary standard and attack that standard for its viability or for the timeliness of its development, is going to detract the Commission away from the business of substantive regulatory analysis and will force the Commission to spend its time instead on making a record which at any given time would support any deference that it was giving to the voluntary standard.

I think that part of the problem with assessing a proposal like this is that people seem not to understand what the Commission's lawyers and technical staff would have to go through in order to be prepared to face a court challenge at any given time during their consideration of regulation of a particular product.

Even if the Commission's actions will be subject only to an abuse of discretion standard, it can't just go willy nilly about its business. The lawyers will insist, if the amendment is adopted, that at all times during these early phases of a potential regulatory initiative that the Commission dot its I's and cross its T's. Too much time will be spent on worrying about whether the Commission could survive an attack on its record at that stage.

We also think for similar reasons that the proposals restricting the use of cost-benefit analysis should not be included in the bill. While I do not want to get hung up on the technical definition of cost-benefit analysis, because there are many, many different levels of economic assessment, the fact is that virtually everything the Commission does involves priority-setting.

This extends as much to enforcement activity as it does to rulemaking, and these amendments, it seems to me, would force the Commission to jump into things when it does not have the resources to see an initiative through. The Commission could get a reputation for either being gun-shy or for trying to bluff manufacturers or industries into thinking that they will proceed in court or with enforcement actions when they really cannot afford to be taking all of these initiatives.

Almost invariably in all of the decisions that the Commission is making there is a need to essentially balance the economics and the expected health and safety benefits.

One final comment that I wish to make relates to the proposal to make it obligatory that the manufacturer of a product named in a civil action complaint involving death or serious injury report to the Commission. I brought along with me today a 165-page complaint filed in a current civil action involving a hotel fire. There are over 200 manufacturers as defendants in this case and many, many more products which are alleged to be culpable in a single fire.

Under the proposed amendments, as they are written, each one of the manufacturers would be obligated to make a report to the Commission with respect to each product allegedly present in the hotel. In addition to that, once an initial report is made, the way the Commission interprets this part of the statute, that report is not complete unless the reporting entity has satisfied about 23 enumerated, very detailed compliance provisions said to comprise a "full" report.

So we oppose this particular amendment because it takes all of the judgment that is currently left with the manufacturer to make a preliminary assessment of whether he has a product which, either by reason of noncompliance or a defect, could create a substantial product hazard.

Thank you.

[The statement and questions follow:]

STATEMENT
on
THE CONSUMER PRODUCT SAFETY COMMISSION
before the
SUBCOMMITTEE ON CONSUMER
of the
SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
for the
U.S. CHAMBER OF COMMERCE
by
RICHARD H. GIMER
March 13, 1989

Mr. Chairman and members of this Subcommittee, my name is Richard Gimer. I am a member of the law firm of Hopkins, Sutter, Hamel & Park. I have been actively involved in those activities of the U.S. Chamber of Commerce ("Chamber") which concern the Consumer Product Safety Commission ("Commission") dating back to the period before the enactment of the Consumer Product Safety Act ("CPSA") in 1972.

We appreciate the opportunity to present the Chamber's views on the draft reauthorization language; and we look forward to constructive consultations with the Subcommittee and its staff regarding the Commission's reauthorization.

Qualifications, Quorum, Appointments, and Priorities

Sections 2 through 4 of the draft reauthorization language would modify the Commission's composition and operations by specifying qualifications to be taken into account in nominations to the Commission, reducing the quorum during periods when the Commission has vacancies, circumscribing the hiring/firing authority of the Chairman, and formalizing the process by which the Commission sets its priorities. While the Chamber does not take a formal position on the proposed changes in hiring/firing authority, it (1) questions resort to a "floating" quorum approach (which, as a practical matter, will merely invite rehearings on previously-decided issues, if and when the Commission were restored to full strength); and (2) supports the proposed amendments concerning qualifications for appointment to the Commissioner positions and the procedures for setting agency priorities.

Petitions Regarding Voluntary Standards

Section 6 of the draft reauthorization language would amend the CPSA § 7 so as to (1) provide for petitions by specified classes of interested parties questioning the adequacy of a voluntary standard which the Commission has indicated it is considering or the timeliness of development of such voluntary standard; (2) prescribe a time schedule for action on such petitions; and (3) provide for judicial review of denials. The Chamber recognizes the restricted circumstances and limited scope of the petition process the draft reauthorization language contemplates. Nevertheless, it is realistic to assume that in virtually every case involving a proceeding initiated through a 553(e) petition, a challenge would be launched using the authority granted in the amendment. Such petitions will necessarily detract from the time the Commission and its staff have available to deal with the substantive merits of the particular safety issues. Accordingly, the Chamber opposes the proposed amendment.

CPSA § 7, as presently amended, reflects the broad-based, Congressionally-approved policy concerning Commission reliance on voluntary standards rather than mandatory rules, together with the conditions under which this policy is to be applied. However, the step-by-step procedure by which the Commission is to implement this policy and decide whether mandatory regulation (based upon the language of the voluntary standard or otherwise) is appropriate or inappropriate is contained in CPSA § 9, as amended. Actions of the agency (with respect to rulemaking) which are subject to review are those taken under CPSA § 9, for which the statute already provides for judicial review.

Under existing law, anyone at any time is free to put his views about the viability of a particular voluntary standard on record with the Commission -- and we assume that this is a regular occurrence. The petition process envisioned by Section 6 of the draft reauthorization language would compel the Commission to treat worthless and meritorious complaints alike. Whereas the obligations placed upon the petitioner are minimal, the Commission, in dealing with such petitions, is confronted with the Hobson's choice of devoting substantial resources within an arbitrarily-short period of time (120 days) or defending a civil action (in one court system or another) predicated on a denial of the petition. Assuming, although not conceding, that the court system would or could handle the review responsibilities envisioned by the proposed amendment within the time frames contemplated by other provisions of the Act, ad hoc citizens' groups and district or appellate court judges (rather than the duly designated and presumptively expert administrative agency expert) would decide the Commission's priorities (in terms of both manpower allocations and regulatory initiatives).

The objection to the process envisioned applies equally whether appeal of a denial would be taken to a U.S. Court of Appeals (as suggested in the draft reauthorization language) or to a U.S. District Court (the only other alternative). While the Commission's product safety rules, themselves, are reviewable by courts of appeal, the assessment contemplated by the amendment might be more readily handled at the U.S. District Court level. The suggestion that the choice of forum would, itself, affect (1) the standards of review; (2) the record required to support the Commission's action; (3) the relief to be granted; or (4) the timing of a decision, etc., is presumptuous. Unless the statute expressly provides what is expected in such reviews, the courts will evolve an approach over time. There is no assurance that it will resemble what was envisioned by the sponsors of the amendment.

Government agencies should be run by those appointed, not by individual citizens, citizens' groups, private lawyers, businesses, or judges. Congress admittedly has the power to require the Commission to regulate a particular product or risk through legislation and to require that it do so within a prescribed time period. That power should rarely be employed, if ever; and it should not be extended to third parties or to the courts.

Proposed Obligatory Time Constraints on Rulemaking

Section 7 of the draft reauthorization language would amend CPSA § 9(c) so as to impose a specific time limit (12 months) for promulgation of a proposed consumer product safety rule, once the Commission has published an advance notice of proposed rulemaking (ANPR). While the Commission would be permitted to exceed the 12-month limit by 180 days for "good cause," the effect of enacting the amendment would be a Congressional determination that there is no such thing as "good cause" for any delay beyond 18 months. This is contradicted by human experience. The Chamber does not believe this amendment should be adopted.

During the 1970s a number of statutes were enacted by Congress which attempted to mandate the schedule applicable to agency rulemaking from start to finish. See e.g., Noise Control Act of 1972, 42 U.S.C. § 4901, et seq. Due to technical, budgetary, legal, and other factors, the responsible agencies frequently were unable to meet the prescribed schedule; and litigation often followed. From the Chamber's perspective, the most likely consequence of imposing a time limit between the publication of an ANPR and promulgation of a Rule would be to reduce publication of ANPRs to the absolute minimum. Conceptually, CPSA § 9 is presently designed to require very substantial regulatory analysis once the rulemaking process has begun. One must seriously question whether the Commission could reasonably be expected to complete such tasks within arbitrarily short time frames and whether it is in the public interest to create a situation in which the Commission would be discouraged from publishing an ANPR altogether, merely because it had doubts about its ability to meet a series of deadlines which would be automatically triggered by such publication.

If, despite these objections, the Congress elects to impose specific time limits on the regulatory process, the Chamber submits that the Commission should be authorized to exceed any such limits for good cause shown.

Proposed Restrictions on the Use of Voluntary Standards

Section 8 of the draft reauthorization language would amend CPSA § 9(b)(2) so as to restrict Commission reliance upon voluntary standards to a standard "in existence." Based upon (1) a belief that the procedural provisions of the existing law (CPSA § 9) already preclude the granting of formal deference in the definitive sense to any voluntary standard other than one which is at least tantamount to an "existing" standard and (2) a belief that the ultimate judgment as to the soundness of deferring to a private sector initiative rather than imposition of a mandatory rule should be left to the Commission, the Chamber views the amendment as unnecessary.

Under the present law, the requisite pedigree of the voluntary standard which is a candidate for Commission deference depends upon the stage of the proceedings. It is evident from a reading of the statute that less is required at the ANPR or Proposed Rule stage than at the point of final decision. The amendment, as proposed, implicitly reflects an appreciation of that distinction. In the final analysis, under CPSA § 9(f)(3)(D), the Commission is barred from promulgating a mandatory rule unless it finds (in the case of a rule which relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary . . . standard) that compliance (with the voluntary standard) is (1) "not likely to [sufficiently] reduce the risk" or (2) the standard is "unlikely to enjoy . . . substantial compliance."

While the Commission can give, and should be permitted to give, some degree of deference to a new, unimplemented, voluntary standard in the early phases of a proceeding looking toward possible regulation of a risk, (1) it cannot formally defer to anything other than a standard determined likely to be effective on the basis of the record (consisting of its staff research plus public comments), and (2) it is not precluded from imposing a mandatory rule by the belated (post-record) development and implementation of a voluntary standard. If the rulemaking record is closed (a process completely within the Commission's control) before promise becomes reality, that would be the standards sponsors' problem. The product manufacturers would be left to request a reviewing court for leave to adduce additional evidence. CPSA § 11(b).

The problem we have with the proposed amendments (§§ 7-8 of the draft reauthorization language would place rigid time limits on the regulatory process and explicitly require the deferred-to standard to be "in existence" is that, if adopted, they would often force the Commission to close the door on a virtually complete voluntary sector effort, only to have an appeals court order the regulatory proceedings reopened to consider the subsequently-developed voluntary standard. The objective of the statutory exercise should be the efficient obtaining of product safety improvements, not a hypertechnical determination of whether a standard had managed to obtain "existence" by the time the bell rang at the end of the fifteenth round.

It does not make good sense for Congress to strip the Commission of all discretion to postpone final action on a regulation (following the limited 180-day grace period), while authorizing a court to force the rulemaking proceedings to be reopened upon a showing by a petitioner that there were "reasonable grounds" for its belated action.

Section 8 of the draft reauthorization language would amend CPSA § 7(b) so as to require the Commission to provide for public comment before it could formally defer to any existing standard. CPSA § 9(d)(2) now provides that rules are to be promulgated by resort to 5 U.S.C. § 553, with the additional right (of interested parties) to make oral presentations assured. This requirement for the opportunity to comment guarantees the involvement of consumer organizations in the process of evaluating the efficacy of the standard. Although we believe this feature of the draft reauthorization language is therefore unnecessary and redundant, the Chamber, nevertheless, agrees with the concept and would not oppose the amendment.

Section 8 of the draft reauthorization language would amend § 7(b) of the CPSA and require the Commission to establish procedures for monitoring compliance with voluntary standards (1) relied upon (i.e., deferred to); (2) developed with Commission participation; or (3) developed under monitoring by the Commission. There is either more or less to this proposed amendment than meets the eye; and in either event, the Chamber prefers to withhold comment until a record is made by its sponsors as to what is intended.

Use of Various Forms of Economic Analysis in Compliance and Enforcement

Section 9 of the draft reauthorization language would expressly preclude a court (either in entertaining an action under CPSA § 12 or in reviewing Commission action taken under CPSA § 15) from rejecting a request for relief or invalidating a Commission action because of the absence of a cost-benefit analysis. The amendment would also bar the Commission from even making cost-benefit comparisons in connection with proceedings under CPSA § 12 or § 15 when the manufacturer has "voluntarily indicated its intention to take (remedial) action." As with other proposals to circumscribe the use of cost-benefit analysis considered in the last Congress, the Chamber is of the view that these amendments would be a giant step backwards.

Cost-benefit analyses have been objected to on the grounds (1) that they ignore unquantifiable benefits of compliance actions; (2) that they depend on assumptions but purport to be definitive guides for decision-making; (3) that they substitute economic judgments for complex legal and policy determinations; (4) that CPSA § 15 does not call for cost-benefit analysis; and (5) that applying cost-benefit analysis to CPSA § 15 matters would create additional delays in developing corrective action plans.

In general, the Chamber does not believe that the alleged shortcomings of cost-benefit analysis can justify its exclusion from the information to be considered by the Commission, whether the object of the decisional exercise is a standard, a ban, or a proposed enforcement action under CPSA §§ 12, 15, or in final agency action under CPSA § 15.

The Chamber would not be so presumptuous as to pass judgment at this juncture on whether any particular economic analysis (or cost-benefit analysis) performed with respect to any specific proposed enforcement action is fair, accurate, or sufficiently comprehensive. But it does believe, from past experience, that the economic perspective should be an integral part of the decisional process, not merely in the Commission's standards-making and/or banning activities under CPSA §§ 7-9 but also in compliance and enforcement activities, such as recalls under CPSA § 15, imminent hazard actions under CPSA § 12, and similar actions. When the Commission seeks or orders a recall of some product, the implicit assumptions are that consumers will benefit from the recall and that benefits of additional safety will outweigh the costs of the recall. The Chamber is of the view that the quality of result will be improved if the implicit assumptions which the Commissioners presumably entertain in deciding to proceed are stated explicitly so that they can be criticized, questioned, and/or changed if they need to be. Similarly, it is problematic to make the existence of a cost-benefit analysis irrelevant to a court being asked under CPSA § 12(c) to issue orders in aid of proceedings for promulgation of a consumer product safety rule, when the eventual safety rule would need to be justified by reference to its reasonableness.

As a matter of policy, the Chamber does not believe the agency should initiate formal legal actions (either through Federal courts or through administrative proceedings) to secure the imposition of remedial orders without having made some assessment of the relative cost and benefits of the relief being sought; nor should the Commission seek to coerce acceptance of settlements obligating respondents to take particular remedial actions voluntarily without regard to their reasonableness. Without suggesting that all such analyses need to be equally comprehensive or that a completed (as opposed to partial) analysis be a prerequisite to initiation of any action, the Chamber submits that information of this nature (coupled with conclusions from officials who are competent in this type of analysis) should be an integral part of most compliance and enforcement decisions.

In 1987, during my appearance before this Subcommittee, I attempted to address the notion now reflected in Section 9 of the draft reauthorization language that the Commission should be precluded from employing cost-benefit analyses where product manufacturers are proposing to take what are often euphemistically referred to as voluntary remedial measures. I suggested at the time that it appeared that the Subcommittee, the Commission, the witnesses, and the opponents of such analyses were using the term "voluntary" to effectively include all actions taken without judicial fiat or a formal Commission order.

While some remedial measures are taken "voluntarily" because of the manufacturer's customer satisfaction policies, guaranties, and/or products liability concerns, it is quite common for such decisions to be made (1) in the face of coercive threats (of litigation) by the Commission and (2) over the objections of the manufacturer.

Aside from the problem of defining what is and is not voluntary for purposes of this section, another inherent problem is that voluntary remedial actions (§§ 12 or 15) elected or implemented before or even during the course of such proceedings may consist of the remedial action which the government sought or something else. Under these scenarios, the government may be arguing for the imposition of relief (on the grounds that it is reasonable and/or reasonably necessary), not having assessed its feasibility and/or having assessed the feasibility at the risk of violating the statutory bar.

We do agree that it is not the Commission's place to talk a manufacturer out of conducting a recall or public notice campaign it wanted to make voluntarily (in the normal sense that word is used) by officiously conducting and publishing a cost-benefit analysis indicating such remedial action was not cost-justified.

Scope of the CPSA § 15(b) Reporting Obligation

Section 10 of the draft reauthorization language would expand the criteria for substantial product hazard reporting under CPSA § 15(b) beyond those criteria which have been in effect since the enactment of the CPSA. Under the proposed amendments, manufacturers, retailers, and dealers would be required to report civil actions (brought for serious injury or death) involving a product and failures to comply with voluntary standards relied upon by the Commission.

The Chamber does not think it necessary to quantify the number of reports which would be generated by literal compliance with the reporting obligations being proposed or to estimate accurately the manpower requirements implied (1) to evaluate the material received or (2) to investigate and prosecute instances of inadequate reporting, in order to make the point that the amendment is impractical, especially insofar as reporting would be predicated on the mere existence of a civil action complaint. Under any level of staffing and funding that we can envision would be authorized by the Congress, the Commission would be left without the capacity to administer CPSA § 15 if the proposed amendment were adopted.

The present statute is designed to force reporting of pertinent information, after the manufacturer has assessed the situation known to it and has applied the statutory test of reportability. To the extent the proposed amendment would make reportability an automatic obligation, the Chamber opposes it.

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RICHARD H. GIMER
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April 6, 1989

The Honorable
Richard H. Bryan
Chairman
Consumer Subcommittee
United States Senate
Committee on Commerce, Science,
and Transportation
Washington, D.C. 20510-6125

Dear Mr. Bryan:

This is in response to your letter dated March 21, 1989 requesting the position of the U.S. Chamber of Commerce position on six (6) aspects of S. 605. The undersigned appeared before your Subcommittee to present testimony on behalf of the Chamber, and the views set forth below are submitted on behalf of that organization as an extension of its prior testimony.

QUESTION #1: Regarding the voluntary standard petition provision in the draft legislation: Is the Chamber's concern about this provision prompted only because of a concern about CPSC resources that would be involved in the petition process?

ANSWER: No. There are two equally paramount concerns, both of which stem from the fact that under our system of laws, once the authority of a court is invoked, the court system takes over (with mandatory filing schedules, briefs, arguments, orders appeals, etc.); and, as to the particular safety issue involved, the Agency necessarily relinquishes its otherwise exclusive control. The amendment would lead to a dual track system in which Commission priorities (products risks in various stages of scrutiny) would be divided into categories -- those subject to § 553 petitions and those that are not. Parties interested in the former group (irrespective of the relative priority assigned by the Commission to the product risk) could haul the Commission before a court (perhaps repeatedly). It stands to reason that if the Commission is going to have to go to court to substantiate its provisional deference to a voluntary standard while it considers the appropriateness of mandatory regulation, it will be increasingly reluctant to grant such deference. The effect of the amendment would probably be to force de facto changes in the Commission's priorities established through the public hearings process.

The object of this particular proposed amendment is essentially to enable the "public" to interject itself mid-stream into the statutory process by which by the Commission assesses whether a voluntary standard is or may provide a viable basis for rectifying a safety problem under investigation. With respect to various functions of the CPSC there are already a number of statutory provisions which permit the public to interject itself into the process; and the question we pose is whether there is a real need for another. For example, under CPSA § 10(a), outside parties can petition for promulgation of a consumer product safety rule; and, with a proper showing, can secure a court order requiring the Commission to initiate a rulemaking proceeding. Consumers can be the source of information triggering mandatory reporting obligations relating to substantial product hazards, and can participate in administrative enforcement proceedings under CPSA § 15. Under CPSA § 23, certain consumers may sue for damages as a result of injuries; private parties may sue under § 24 for enforcement of consumer product safety rules; and, under CPSA § 26(c), states may petition for exemption from preemption.

When one considers the maze of rights already possessed by outside parties to initiate action and/or to call the Commission to account, it would appear that the sole function of the proposed amendment is to put the Commission perpetually in a position of having to justify to a court the manner in which it is applying/implementing the provisions of CPSA § 7-9 with respect to voluntary standards.

The 1981 Amendments to the CPSA were intended to enable and require the Commission to get the greatest obtainable enhancement to safety for its buck, with the idea being that its ultimate judgments with respect to the viability of deference to a voluntary standard would be subject, under CPSA § 11, to judicial review. The amendment would put outside parties in a position to cause a court to second-guess the Commission at every inch along the way of its investigating and rulemaking activities with respect to a particular issue.

The proponents of the petition process have been adamant opponents of the 1981 Amendments pertaining to voluntary standards, all along; and it now appears that they have found a way to make the Commission's use of the voluntary standards system unpalatable.

QUESTION #2: You say that the CPSC would be required by the voluntary standard petition provisions to treat both worthless and meritorious complaints alike: Do you have a proposed solution to that problem? If so, what would you suggest?

ANSWER: Bona fide complaints about unjustifiable Commission inaction may be addressed under CPSA § 10(e) (improper denial of petition), and under § 24 (failure to conform to a consumer product safety rule). Additionally, under proposed amendments relating to the procedures by which CPSC priorities are to be established (which are supported by the business community and professional consumer organizations, alike) consumers have an opportunity to establish that particular safety issues truly deserve Commission priority. A party failing to make its case in the latter forum, should not be permitted to turn to a judge to second-guess the Commission.

QUESTION #3A: The time limitation on rulemakings in the proposed legislation is based on the fact that rulemaking at the CPSC normally takes 4 and one-half years: You have said that the proposed one-year time period is too short, and that it would result in the CPSC not issuing advanced notices of proposed rulemaking. Do you think the CPSC now issues ANPR's expeditiously and when it should?

ANSWER: Most governmental decisions about rulemaking (whether involving safety issues cr otherwise) require the responsible agency to assess the manpower to investigate an alleged problem, to formulate a proposed solution, to satisfy the statutory prerequisite of rulemaking, to reassess the proposed solution in light of the rulemaking record, to enforce a rule, once adopted, and, to defend an appeal of the final agency action. We must assume that some regulatory or judicial initiatives (whether issuance of an ANPR or commencement of an action under CPSA § 12) are occasicnally undertaken without regard to the resources available to see them through; and conversely, we must assume that some initiatives are undertaken to finesse a response, to quiet Congressional or public criticism, or for public relations or cosmetic purposes. But, for the most part, such Agency decisions are taken with an eye toward the need, time, expense, difficulty and requisite lead time for the given initiative.

The Commission has probably issued ANPR's for each of the reasons described above -- reflecting the varying judgment of what the agency was hoping to accomplish. We also assume that, with the benefit of 20-20 hindsight, anyone could identify situations where quicker publication of an ANPR would have had salutary effects. This admission does not suggest statutory amendment is required.

It should be kept in mind that the Commission has numerous powers to offset the effects of a belatedly recognized mistaken delay in publication of an ANPR; including complete control of its rulemaking schedule (once an initiative is taken) and the ability to go to court under § 12(c) for injunctive interim relief in aid of a rulemaking initiative.

QUESTION #3B: The time limitation on rulemakings in the proposed legislation is based on the fact that rulemaking at the CPSC normally takes 4 and one-half years: You have also suggested that the time period be extended "for good cause shown". Can you give specific examples of what might be "good cause"?

ANSWER: Generally speaking, good cause goes to the inability of the Commission to make an obligatory (or otherwise important) decision within the time required in the manner it views as appropriate under the circumstances. For example, a particular feature of a standard might be undergoing tests for efficaciousess as a remedy; or, for its costs or likely impact on product availability, etc. Some agencies in this predicament would simply elect to impose the requirement by publishing the rule, setting the lead time far enough in the future to permit the state of the art to catch-up, etc. The Commission, of course, has that option under CPSA § 9(g); but that approach increases the likelihood that the rule will be challenged under CPSA § 11.

Where a voluntary industry standard is being considered as the basis for Commission action under CPSA § 9(b), the assessments as to the efficaciousness of the standard and/or the extent of its likely voluntary adoption, might be incomplete. Or, the Commission may simply not have the manpower/expertise available to complete a particular matter or schedule.

QUESTION #4A: Let me refer to the provision specifying when a manufacturer must submit notice to the CPSC: Is the Chamber's only objection to this provision based on lack of CPSC resources to enforce it?

QUESTION #4B: Ms. Fise today has suggested that, at least with regard to actions for serious injury, we adopt a numerical threshold for reporting of those actions. Do you agree with that suggestion? If so, what number is appropriate? If not, why not?

ANSWER: No. The principal difficulty with any form of automatic notification requirement (including the two referred to in the proposed amendment and the alternative approach suggested by Ms. Fise in her prepared testimony before the Subcommittee) is that (1) the obligation to report carries with it the full panoply of obligations under 16 C.F.R. § 1115.13, and (2) the staff of the Agency must give time and attention to any report until the situation is fully resolved or is determined not be have been reportable in the first instance.

It is easy for outsiders to urge the Congress to mandate more reports, and equally easy for outsiders to dismiss the suggestion that such reports will both tax the Agency and the submitter. Rather than to accept the conclusory views of the opponents or proponents of this amendment, we think it would be instructive were the Committee to ask the CPSC to require its working-level enforcement staff to provide a "blow by blow" description of how CPSA Section 15(b) is administered as a matter of routine. Included should be a request for copies of any and all standardized communications which exist for use in dealing with manufacturers who have advised the Commission about safety problems which may constitute possible reportable defects and/or instances of non-compliance, and any internal policy manuals which describe the posture the agency/staff is to take with respect to what obligations are imposed upon the Section 15(b) reporter in various contexts typically encountered in the process.

There is an additional reason why the mere non-compliance with a standard formally deferred to under CPSA § 9(b) should not be automatically reportable under CPSA § 15(b). CPSA § 9 contemplates that the Commission is to defer to a voluntary standard if "it is likely that there will be substantial compliance with such standard." Implicit in this test is a recognition that the requisite level of safety flowing from a governmental determination (to defer to the standard) is being obtained even though some non-complying products will continue to be manufactured and sold.

Section 15(b) is not designed to be a device for determining the sufficiency of voluntary compliance with a product safety standard; but is, instead, a mechanism for identifying candidates for retroactive remedial measures (notice and/or recall) under CPSA § 15(c) and (d)

Under the CPSA, as amended, it is not a violation of the law to manufacture a product which fails to conform to a standard to which the Commission has deferred; but it is a violation to fail to furnish the information requested by § 15(b); and to fail to comply with a notice and/or recall order duly imposed under § 15(c) or (d). Such orders are only appropriate when a product presents a substantial product hazard (and other statutory prerequisites are met).

While mere failure to comply with a standard to which the Commission has deferred should not be reportable, there may be circumstances where non-compliance with a standard or regulation deferred to under CPSA § 9(b) should be reported, such as where it can reasonably be concluded that the failure to comply results in a defect which could create a substantial product hazard. Compare 16. C.F.R. § 1115.10(b). The same criteria should be employed in assessing whether the filing of a civil action complaint is reportable.

QUESTION #5: You have addressed the issue of cost/benefit analysis, which has been quite controversial in the CPSC's recent past. As I read the provision in the draft legislation, except with regard to voluntary actions, it is not intended to *preclude* the CPSC from considering any benefits and costs to be derived from taking action under Sections 12 and 15, but merely to state that such an action is not in all cases *required*, and certainly not required always to be a mechanical, rigid process: Would you agree with that assessment?

ANSWER: We agree that the language of the amendment should be given the construction you have suggested. The problem we have is how the courts reviewing the Commission's actions will construe the amendment; and, whether it will be considered by the Commission or held by courts to modify existing law in terms of what showing is required to sustain an injunction, a regulation, or a remedial order.

Experience shows that many months or even years may ensue between the initial identification of a safety problem and ultimate disposition of the matter (by means of a dismissal, settlement, suit, or judgment). In the ordinary course, the Agency must make a series of judgments (*i.e.*, whether to bring a CPSA § 12 action; whether to sue under CPSA § 15 if a pre-suit settlement can not be reached; what relief to seek from the manufacturer and through the court; whether to settle during litigation; and even how to define what is required (or what to accept in satisfaction), once a final decision is obtained. At any stage the Commission (usually through its staff) must have some basis for putting its effort in perspective. Whatever its purpose, the amendment would have the effect of making the Commission operate with blinders.

QUESTION #6: I note your comment about precluding consideration of costs and benefits to "voluntary" actions: Is that because "voluntary" can have differing meanings?

ANSWER: At any time during the protracted process described above, the manufacturer could indicate its intent to undertake retroactive remedial measures of some nature (*i.e.*, notice, recall, etc.), or proceed to do so on its own; these measures could, but might not, lead to termination of the pending litigation. It is popular to refer to these actions, and anything short of court ordered relief, as "voluntary" remedial measures. That is a misnomer. In the real world in which these disputes are resolved, it is not practicable to use "voluntariness" of a third party's future actions as a test of what the Commission must do, or is precluded from doing, in the pursuit of its statutory duties at any given point in time.

We trust that these supplemental responses will be helpful to the Subcommittee.

With kind regards.

Sincerely,

Richard H. Gimer

Senator BRYAN. Mr. Gimer, thank you very much for your testimony.

Ms. Fise, you raised the question of adequacy of budget and, as I look at the draft, we are talking about $36 million for fiscal year 1990, $38 million in round numbers for fiscal year 1991. In your view, if that is not an adequate budget in light of the cost of living adjustments that you referred to in your testimony, what would your recommendation be in terms of budget levels for the agency?

Ms. FISE. Well, I think that it is really crucial for the agency to receive steadily-increased amounts. This document, which is supported by the insurance industry and consumer and health groups, calls for a $50 million budget.

Senator BRYAN. Fifty?

Ms. FISE. Yes, 50.

Senator BRYAN. In your judgment, would that be adequate?

Ms. FISE. That would be adequate, more than adequate for next year. But I know that in reality that is not going to happen. I think that what we need to do is start to steadily increase the amounts to get back to where we should be.

Senator BRYAN. Ms. Gilbert, your comment?

Ms. GILBERT. As I mentioned in my testimony, the budget today, $34.5 million for 1989, in real dollars is less than one-half what it was when the agency was first established. What we would like to see, as Mary Ellen said, are steadily-increasing budgets to at least bring the agency back to its originally-intended budget back when it was first established.

Senator BRYAN. I take it from your testimony that $50 million as far as the next fiscal year would be a good benchmark from which to proceed with cost-of-living adjustments in the outyears?

Ms. GILBERT. Yes. We would support the $50 million figure.

Senator BRYAN. Mr. Gimer, you referred to the "floating quorum". I am familiar with the term floating crap game, but I am not sure that I am familiar with the term floating quorum. I'd like you to expand upon your comment, and I would ask you this question. Do you favor or does the Chamber favor a three-member Commission, a five-member Commission, or do you favor the approach which at least Senator Gorton raised rhetorically? Should we convert the Commission to an administration and eliminate the commission concept?

Mr. GIMER. Well, first of all, Mr. Chairman, the floating quorum refers to the fact that the quorum would be a function of the number of sitting commissioners during a particular period of time, which presumably would range from two to five. The problem that I tried to highlight was that when you get to a situation like you have now, where you are running what is nominally a five-member Commission with two Commissioners, it means that in out years, when the Commission is at a full complement of five there is a strong likelihood that many decisions the Commission made by a vote of two Commissioners could be put into question any time you had either four or five sitting Commissioners.

What might presently seem like a solution to enable the Commission to make some decisions now, would subject those decisions to a certain amount of vulnerability later. So we think that basically there is a sort of fish or cut bait situation here—a decision ought to be made by Congress as to how big this Commission is going to be.

Now, on the question of a collegial body versus the single administrator, I was here before the subcommittee two years ago when that was one of the issues on the table, and I had to report that the organization for whom I speak, the U.S. Chamber, had not taken a policy position on that in recent years and therefore we were not going to get into it.

But we do think that the sort of in-between situation that exists now is really not the answer to anything.

Senator BRYAN. Given your druthers, Mr. Gimer, if the Chamber has taken a position, do you favor a three-member or a five-member Commission?

Mr. GIMER. It has not taken a position.

Senator BRYAN. Ms. Fise, you were and have been critical of the Commission's action in deferring to industry where there is no voluntary standard but just a voluntary promise. I would like to ask you specifically, can you cite examples of where in your judgment that has created problems or has worked to the disadvantage of the American consumer?

Ms. FISE. A number of examples come to mind immediately, one in which the CFA was involved. We petitioned the Commission to establish limits on formaldehyde emissions from particleboard and pressed wood products. That petition was denied in 1985. In that denial letter the Commission wrote to us that they fully expected that voluntary standards would be developed.

I can report today, four years later, there are no voluntary standards. There has been a draft that has gone through two different organizations, and I learned recently that because of negative votes submitted by both my organization and the CPSC that that process is going to have to continue to address those negative votes. That is just one example.

In the example of swimming pool covers, in 1980 the Commission recognized the problem. They were petitioned by outside parties in 1983. In 1985 the Commission denied those petitions and then went to the industry and pleaded with them to begin standards development. CPSC finally got the message home in 1987 when the industry started the development of a voluntary standard. But yet that is nine years that has passed since CPSC recognized the problem.

There are other examples where CPSC has been "hoping" that the industry will take the message seriously and develop the voluntary standard.

Senator BRYAN. Thank you very much, Ms. Fise.

Senator Gorton?

Senator GORTON. For both Ms. Fise and Ms. Gilbert, I would like you to comment on a point Mr. Gimer raised, that is the nature of the organization, the advantages, if any, to having a commission as against an administrator. And you might also comment on whether you favor, as I gather you do because I asked this of Ms. Gilbert the other day, a commission and whether or not the same rationale applies to the National Highway Traffic Safety Administration.

And assuming that you prefer a commission, should we, instead of trying to change the quorum, just simply change the number of commissioners to three?

Ms. Fise. We support the full complement of commissioners, five commissioners. We believe it is very important for this to be an independent agency. Safety concerns should not be subject to partisan beliefs. So in order to assure the accountability and the checks and balances we favor a multi-member commission.

We would like that to be five because we think that that was what the Consumer Product Safety Act was centered on, the fact that they were going to have five commissioners. But I have to say, given the agency's budget right now, to go with three certainly is in line, given very, very limited funding. However, we think five would be best. But we would settle for three, given the budget problem.

Ms. Gilbert. We also would support the full Congressionally-intended five commissioners. We feel a collegial body is very important to the independence of the agency which is of utmost importance to us. And that necessarily means you should have more than one administrator to provide checks and balances.

Another advantage of having a commission is to take advantage of the sunshine laws. We feel it is very important as a matter of public accountability and oversight of the agency to have commission meetings in the public. And again, if you have a single administrator, a single administrator can meet with himself or herself and you do not have the benefit of the sunshine laws.

As far as whether it should be five or whether it should be three, it should be a multiple-member commission. If the quorum requirement were changed to two, we would support a commission of three.

Senator Gorton. Let me ask you a substantive question. There was one brief mention earlier during the course of this hearing of ATVs. First, for all three of you, am I correct in what I admit is a vague understanding that there is little, if any, difference between ATVs and some licensable on-the-road vehicles other than the absence of a headlight, and, second, to the extent that that kind of motor vehicle is very similar to motor vehicles which travel on our highways, should ATVs and standards relating to them be addressed by the Consumer Product Safety Commission or of the National Highway Safety Administration?

Is there the expertise in this tiny little agency to deal with what for all practical purposes is a motor vehicle?

Ms. Fise. I think the ATV is distinguished from traditional type motor vehicles under NHTSA's authority because it is intended for off-road use. If you had asked me that question in 1983 and 1984 when we first started to see these deaths and injuries, my answer might have been a little different.

Right now, though, we have an agency that has five years or more of expertise in dealing with ATVs. Their staff has been spending an inordinate yet commensurate amount of time with that problem. So I do not think that it would be advisable to just take this and put it over at NHTSA at this point.

We have disagreements with what the agency has done on ATVs, but it is not because their staff did not have the right expertise.

Senator Gorton. Mr. Gimer, do you have a thought on that subject?

Mr. GIMER. The Chamber has traditionally avoided taking positions on product-specific issues unless they present some generic regulatory principle, and I do not think I could add anything to what has been said here.

Senator GORTON. Ms. Gilbert?

Ms. GILBERT. I think that Mary Ellen covered the subject.

Senator GORTON. Well, then let me ask you the same question I asked of the two Commissioners with respect to setting annual priorities for the Commission.

The provision in this bill, which calls for public hearings on priorities, would institutionalize what the Commission has been doing recently. With the expansion of the authority of outside, but interested, organizations like your own to influence the Commission's agenda by petitions with respect to voluntary standards and the like, is there any risk, in your opinion, that that could so distort the agenda of the Commission and the use of its regrettably very limited resources as to make the annual priority hearings on the most important issues difficult or impossible to fulfill?

Ms. FISE. Well, I think there are really two provisions of the draft bill we are talking about. Section 4 on priorities, as you correctly point out, institutionalizes what the Commission already does. They hear from the public, they hold a hearing, and they set their priorities.

The provision with respect to petitioning on voluntary standards I think in some cases by some people has been blown out of proportion. One must have already filed a petition under the Administrative Procedures Act in order to have standing, if you will, in order to bring this second challenge.

And for that second challenge, again, the Commission must have been in a stage where the voluntary standard is being developed and it is developing too slowly or the voluntary standard that is being developed is inadequate. So I think even if you had a huge pool of original petitioners under the APA it is whittled down by the fact that there are these threshold requirements that must be met vis-a-vis your draft provision.

Ms. GILBERT. We feel that the petitioning provision is very important, especially given the fact that the Commission often defers to voluntary standards. Therefore, voluntary standards have become very similar to rulemakings and mandatory standards under this Commission.

So, to not allow the public to participate or to challenge those voluntary standards is really taking away our right to be participating in the Commission business.

Senator GORTON. Thank you, Mr. Chairman. And thank you, all three of you.

Senator BRYAN. Let me thank the last panel very much for their comments, testimony and response to our questions. I thank each of the other panelists who have appeared here today. I would say that the large turnout at this Subcommittee hearing today is evidence of the interest in this piece of legislation. It will be my intention to consider the comments and testimony that we have heard today and to be introducing a piece of legislation very shortly.

Senator Gorton, may I defer to you if you have any further comments, words of wisdom or enlightenment to share with us before we adjourn?

Senator GORTON. No, Mr. Chairman, you have stated my views both on this afternoon's hearing and where we ought to go from here with complete adequacy.

Senator BRYAN. Thank you very much. This hearing then stands adjourned and the Subcommittee stands in recess.

[Whereupon, at 3:51 p.m., the Subcommittee adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF THE AMERICAN ACADEMY OF PEDIATRICS

The American Academy of Pediatrics is an international organization whose 37,000 pediatricians have a longstanding and deep commitment to protect children from product-related injuries. It is in that spirit of child-health advocacy that the Academy wishes to congratulate this subcommittee, which is endeavoring--yet again--to reauthorize the Consumer Product Safety Commission, and thus help that beleaguered but extremely important agency to meet its mandate.

Certainly much needs to be done to restore the Commission's effectiveness, not least the nomination of a new chairman and additional commissioners who share, for example, the dedication of Commissioner Anne Graham in sedulously protecting the public--and especially children--from hazardous products. Such fully assertive leadership has been conspicuously absent from the agency for several years and, regrettably, the serious toll is demonstrable in deaths and injuries associated with everything from large, powerful all-terrain vehicles to small, seemingly innocuous crib toys.

More enlightened management would only go so far, however. It must be said that President Bush's request for funding the Commission during fiscal 1990 amounts to merely $33.48 million. That is not nearly enough. Indeed it is actually $1 million less than CPSC was appropriated back in 1974, an overall cut during the past 15 years of more than 50 percent in real terms (dollars adjusted for inflation). Agency staff has been reduced by more than one-third in this decade. These steps to emasculate CPSC are patently indefensible, and the Academy strongly urges the members of this distinguished panel to pursue immediate remedies. Only then will the agency have a second opportunity to carry out the express will of Congress, which in 1972 called upon the newly created Commission "to protect the public against unreasonable risks of injury from consumer products; to assist consumers to evaluate the comparative safety of consumer products; to develop uniform safety standards for consumer products and minimize conflicting state and local regulations; and to promote research and investigation into the causes and prevention of product-related deaths, illnesses and injuries."

Undoubtedly the legislative reauthorization contemplated by this panel would go a long way toward rejuvenating the CPSC, providing it for the first time with important new tools to help get dangerous products, particularly products dangerous to children, off the shelves and out of the marketplace. Imposing tighter reporting requirements on industry, for example, mandating that manufacturers report to the agency any lawsuits filed against them for certain defective products, would permit a far prompter federal response to risks which otherwise might go undetected. Giving state attorneys general more authority to seek swift judicial remedies if they spot safety violations is an overdue proposal which would greatly benefit American children. New civil penalties for violation of the Federal Hazardous Substances Act, in addition to the often ineffectual farrago of criminal penalties and injunctions currently available to authorities, could well prove to be an enormously useful new enforcement tool. All these innovations, and others, are urgently needed, as children continue to suffer extraordinary rates of death and injury as a result of their exposure to various dangerous products over which the Commission exercises, or ought to exercise, jurisdiction.

Mr. Chairman, consider if you will the context of our concern.

The extent of the problem of childhood injuries

Pediatricians recognize childhood injury as the major threat to the health of American children. Each year there are about 8000 unintentional injury deaths to children ages 0-14. That number is more than doubled if you extend the age range to 19 year olds and include the 7000 older teenagers we lose in automobile crashes each year. When you add to that the 2000 annual suicides and 3000 annual homicides involving young people, injuries annually claim the lives of some 28,000 children and teenagers in this country.

Injuries account for almost half the deaths in the preschool years, more than half the deaths among school-age children, and nearly four out of five deaths to persons ages 15-24.

Injuries kill six times as many children as cancer, which is the second leading cause of childhood death. Injuries account for more deaths among persons ages 1-34 than do all diseases combined.

While the injury death count is high, the toll of non-fatal injuries is, of course, much higher. Injured children account for 350,000 hospitalizations and nearly 10 million emergency room visits each year. One out of every nine children will be hospitalized for injury before his or her 15th birthday.

Childhood injury is costly, both to families and to society. Direct costs of acute care alone for injured children and teenagers are estimated by the Office of Technology Assessment to be $2-3 billion annually. If you add to this long-term care, the costs are substantially higher. Injuries to children also result in huge indirect costs, owing to years of potential life lost and productivity foreclosed. Unintentional injuries account for 2.3 million years of potential life lost. Add the lost productivity due to intentional injuries--a major public health problem in teenagers--and this country forfeits more than 3.7 million person-years of productive life to injuries. Injuries, both intentional and unintentional, disproportionately affect the young and the poor. The prevention of injuries deserves our urgent attention.

The causes of injuries are known

It is a grim paradox that injury is the leading cause of death in children, while at the same time it is also the cause that is perhaps best understood and certainly the most preventable. While the underlying mechanisms of cancer, heart disease and AIDS are only partially understood, the mechanisms resulting in injury have been well understood for decades. It is truly tragic that thousands of children die each year from diseases, but it is a greater tragedy that we lose so many more thousands as vehicle occupants, as pedestrians, and as the result of injuries in the home--because these deaths we know how to prevent.

The means to prevent many childhood injuries are readily at hand

Perhaps the greatest obstacle to reducing the damage from injury is a persistent belief among many that injuries are random, unpredictable events growing largely out of human error. Injuries are neither random nor unpredictable. We have at hand the ability to prevent the majority of pediatric injury deaths by the application of sound principles of public health. But to do that, we must insist that injury problems be studied objectively and scientifically. We, most importantly, must separate our efforts at injury prevention from our efforts to assign blame or determine guilt.

Finger-pointing has not helped solve public health problems in the past, and it will not help solve this one.

When I refer to injuries as a public health problem, I emphasize the word "public." It is a problem that affects us all, and its causes are deeply rooted in our society, our technology and our man-made environment. As a health problem, injuries constitute an epidemic. The injury epidemic is no different from disease epidemics of the past, which in every case has come under control as a result of concerted public effort. As communities and as a nation, our first step must be to decide that we can no longer tolerate death and disability for thousands of our children whose misfortune is perfectly preventable.

It would be impossible to discuss today the full range of injury problems that confronts our children. Instead, the Academy proposes to examine a few of the major areas that merit CPSC attention and intervention.

Bicycle-related head trauma

Bicycle injuries are common; most are not serious. However, about 500 children die each year riding bicycles, and 80 percent of those deaths are the result of head trauma. An additional 70,000 children are treated in emergency rooms each year for bicycle-related head trauma.

Bicycle helmets can prevent three out of four serious head injuries to children. It is a simple intervention that is infrequently applied. The Academy recommends that all bicyclists wear helmets. Promoting the use of bicycle helmets among children is as well a major priority of the Bicycle Federation of America and The National Head Injury Foundation.

Federal attention is needed to help protect children from head trauma in bicycling, as well as in other recreational activities. Not every bicycle helmet offered for sale is a safe one. There are currently no federal standards for bicycle helmets, as there are for motorcycle helmets. We would get more children into better bicycle helmets if there were federal standards for helmet crashworthiness. The Academy is now taking steps to petition government agencies such as CPSC to implement a uniform, effective bicycle helmet standard, which would assist families in assuring that children are not subjected to preventable head trauma.

Three- and four-wheeled recreational vehicles

The 1980s have brought to parents the needless hazard of the all-terrain vehicle (ATV). These three- and four-wheeled motorized vehicles, since 1982, have taken 1100 lives and have caused nearly 400,000 injuries serious enough to warrant emergency room treatment. Nearly half of the toll has been to children under the age of 16.

ATVs are heavy, powerful and unstable. They violate every principle of safe product design in that they make no accommodation in their handling characteristics for the limitations and the capabilities of the riders for whom they are intended. ATVs frequently tip over during routine maneuvers and at routine speeds. Furthermore, they are designed to be unforgiving of the driver when they do roll over. In an ATV mishap, several hundred pounds of heavy machine fall on top of the child; this is in contrast to a fall from a two-wheel vehicle where the vehicle slides out and away from the rider. ATVs offer the child's body no protection. As a result, pediatricians see fractures, internal injuries, brain injury and often death.

Last year the CPSC and the Justice Department entered into an agreement with ATV manufacturers to halt the sales of new three-wheel ATVs and to institute a public education campaign. The AAP believes that this is a totally ineffective and ill-advised agreement, and, notably, it was approved over the valid objections of Commissioner Graham.

The agreement will not protect children. It all but ignores the several million hazardous vehicles in the hands of consumers, vehicles that have an average usable life span of six or seven years. Used three-wheel vehicles are still for sale on dealers' lots, and there is now a brisk business in private sales of ATVs among individuals. New four-wheelers can still be sold as recreational vehicles for children.

In addition, Mr. Chairman, the Academy would direct your attention to a particularly cynical maneuver on the part of the ATV industry as reported by the Associated Press on the 30th of January, just one month ago. It seems that Honda, which is barred by the consent decree from selling its new, three-wheel ATVs, has decided to donate 100 of these vehicles to the state of New Hampshire's fish and game department. This is a master stroke of corporate chicanery. It gets 100 banned ATVs out into the marketplace where eventually they can be sold and resold, thus further endangering American children technically without violating the court order. If this scheme works in New Hampshire, Mr. Chairman, what next? One thousand new three-wheel ATVs to California? Hundreds to Texas?

Childhood ATV injuries and deaths will continue to mount in 1989 unless the Congress or CPSC directs that a system of refunds be instituted to help remove from circulation those vehicles that have been purchased for use by children. The ATV must be regarded as a defective product. Further restriction on the sale of these vehicles is warranted and necessary.

As a final note, the Academy hopes that the federal government will learn from this decade of ATV tragedy, and that it will make provisions to assure that, in the future, recreational vehicles cannot be brought to market without the manufacturers first demonstrating that their products meet performance and design standards, and thus assure that hundreds of children will not be killed and that thousands will not be permanently disabled.

Residential fire deaths

Notwithstanding the easy availability and wide use of smoke alarms, which can and do alert families to imminent danger, each year 5000 people die in house fires. There are 19,000 injured, and there is $3.4 billion in property damage. Cigarettes are involved in a substantial number of the residential fire deaths. They are responsible for perhaps 1500 fire deaths and 7000 injuries. These fires typically occur at night when people fall asleep and drop lighted cigarettes onto upholstery or bedding. By the time the fire breaks out, everyone is asleep.

Cigarettes vary greatly in the temperature at which they burn and the length of time they stay lighted before self-extinguishing. Some popular brand of cigarettes are likely to ignite upholstery, while others are much safer. Many lives could be saved and injuries prevented if the CPSC or some other government agency were given jurisdiction to regulate cigarettes as a consumer product. We have seen great benefit from fire safety standards for children's sleepwear; we could expect comparable benefit from fire safety standards for cigarettes.

A related problem that the Academy wishes to draw to this panel's attention is that of residential fires started by children playing with disposable butane lighters. These inexpensive, colorful plastic lighters can be easily ignited by preschool children using two hands. Each year 140 children die in fires started this way; 125 of these victims are under the age of five. The fires often are started in the bedroom where sheets and blankets easily ignite, or while playing behind the living room sofa, where, when a fire starts, escape is difficult.

The majority of the fires started by children playing with butane lighters could be prevented by the promulgation of safety standards requiring design modifications rendering these lighters child-resistant.

Toy safety

In 1984, 271 children died from choking. Small parts, whether from toys or other household products, are a major cause of choking in pre-schoolers. Current CPSC regulations under the Federal Hazardous Substances Act specify that certain toy and products intended for small children are "banned hazardous substances" if they present an unreasonable risk of choking. We have learned that the standard is inadequate. A CPSC study found that in one 10-year span, 71 choking incidents, including 14 deaths, occurred from choking on objects that are of dimensions that would pass the small-parts safety standard. The Academy has urged the CPSC to reexamine the small-parts standard, so that children will be better protected. Also, toys which have small parts and are intended for older children need to be more conspicuously and accurately labeled as to their choking hazard--to assure that they never find their way into the hands of younger children.

Another hazard that pediatricians would urge the CPSC to address promptly is that of strangulation caused by dangerous crib toys (toys that are suspended across the side rails of cribs). The CPSC is aware of at least 30 deaths related to these toys, which become an attractive and dangerous nuisance as soon as a child can get up on his or her hands and knees. Children's necks become entangled in cords attached to these toys, or children become entangled in clothing hooked over the toys. The CPSC should issue safety standards for these toys, banning those that present a risk of strangulation or entrapment, and requiring more conspicuous and forceful labeling as to the ages for which certain toys may be appropriately used.

Conclusion

Mr. Chairman, the Academy has sought to highlight here some of the major injury issues that confront our children, as it is clear there is a productive and promising role for Congress and the CPSC to play on their behalf. Pediatricians view injury prevention as eminently achievable if government assumes its share of the responsibility. Federal agencies such as the Commission need adequate resources to do their jobs. The Academy is prepared to support your leadership, and that of this subcommittee, to ensure that neither one more death nor one more disabling injury befalls our children only because we lacked the political courage to provide them the protection to which they are entitled.